TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 795

JESSE WOODSON, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES, AND W. A. JULIAN, AS TREASURER OF THE UNITED STATES, PETITIONERS,

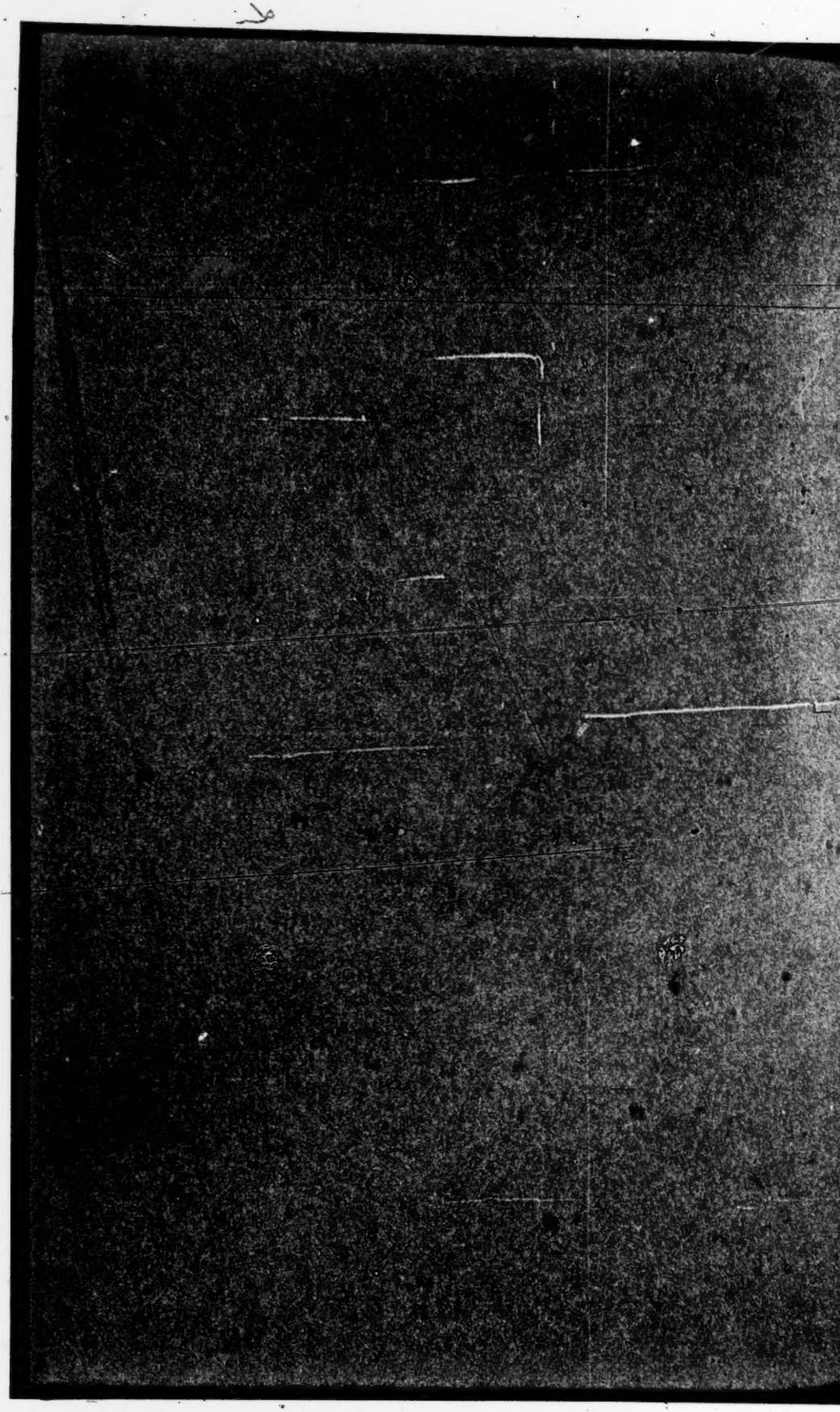
vs.

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT VORMALS ROESSLER, A CORPORATION, FRANKFURT A/MAIN, GERMANY.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED FEBRUARY 17, 1934.

CERTIORARI GRANTED MARCH 12, 1934.



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Supreme Court of the District of Columbia

No. 52733 in equity

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT VORMALS ROESSLER, a corporation, Frankfurt a/Main, Germany, plaintiff

vs.

HOWARD SUTHERLAND, INDIVIDUALLY AND AS ALIEN PROPERTY CUSTODIAN of the United States, and Walter O. Woods, individually and as Treasurer of the United States, defendants

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill*

Filed April 15, 1931

In the Supreme Court of the District of Columbia

No. 52733 in equity

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT VORMALS ROESSLER, a corporation, Frankfurt a/Main, Germany, plaintiff,

vs.

HOWARD SUTHERLAND, INDIVIDUALLY AND AS ALIEN PROPERTY CUSTODIAN of the United States, and Walter O. Woods, individually and as Treasurer of the United States, defendants

Bill for recovery of money belonging to plaintiff and held by the defendants, for injunction and other relief

TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA:

The plaintiff states as follows:

1. The plaintiff, Deutsche Gold-und Silber-Scheideanstalt vormals Roessler, a corporation organized and existing under the laws of Germany, with its principal place of business in Frankfurt a/Main, Germany, brings this suit in its own right. It has no place of business in the United States.

2. The defendant, Howard Sutherland, is now and for some time past has been the duly appointed, qualified, and acting Alien Property Custodian of the United States; and the defendant Walter O. Woods is now, and for some time past has been, the duly appointed, qualified, and acting Treasurer of the United States. They are sued herein in such official capacities and individually.

3. Plaintiff in filing this bill invokes the general jurisdiction in equity of this Court as well as the special jurisdiction con-
2 ferred upon it by the provisions of the act of Congress known as the Trading with the Enemy Act, and the various acts amending and supplementing that act, including the act known as the Settlement of War Claims Act of 1928.

4. For a long time prior to the entry of the United States into the World War, the plaintiff, which was then and is now engaged in the manufacture and sale of various chemicals, dyes, etc., owned certain property in the United States, including a large number of shares of the stock of three American corporations, the Roessler & Hasslacher Chemical Company of New York, N.Y., the Niagara Electro Chemical Company, of Niagara Falls, N.Y., and Perth Amboy Chemical Works, of Perth Amboy, N.J., all engaged in the manufacture of chemicals, dyes, etc. For a long time prior to the entry of the United States into the World War, Holzverkohlungs-Industrie Aktiengesellschaft, a corporation organized and existing under the laws of Germany with its principal place of business at Konstanz, Germany, which was then and until in or about July, 1930, was engaged in the manufacture and sale of various chemicals, dyes, etc., owned certain property in the United States, including a number of shares of the stock of an American corporation, Perth Amboy Chemical Works, of Perth Amboy, N.J. Pursuant to the provisions of the Trading with the Enemy Act, the Alien Property Custodian seized on the books of these corporations all of the right, title, and interest of the plaintiff and said Holzverkohlungs-Industrie Aktiengesellschaft, respectively, in and to their stock in the said corporations, as well as other property, and since the date of the seizure managed and administered the property so seized, together with the proceeds thereof and the earnings or income therefrom and the additions and accretions thereto, under the
3 provisions of the Trading with the Enemy Act, as from time to time amended.

5. On or about July 16, 1930, Holzverkohlungs-Industrie Aktiengesellschaft was, pursuant to the provisions of German law, merged into the plaintiff, and as the result of said merger the plaintiff became possessed of all of the assets of said corporation and assumed all the liabilities thereof. Documents in the proper form have been submitted to the office of the Alien Property Custodian evidencing this merger, and as a result thereof all property held in the name of Holzverkohlungs-Industrie Aktiengesellschaft has been generally and specifically transferred on its books to the name of the plaintiff as the recognized successor to all its right, title, interest, and claims in and to the property belonging to it and held by the defendants or either of them. This proof was furnished pursuant to section 9 (p) of the Trading with the Enemy Act, as amended by section 14 of the Settlement of War Claims Act of 1928, which provides:

"The Alien Property Custodian shall transfer the money or other property in the trust of any * * *, corporation the existence of which has terminated, to trusts in the names of the persons * * * who have succeeded to its claim or interest."

6. Subsequent to the enactment of an amendment to the Trading with the Enemy Act approved March 4, 1923, and known as the

Winslow Act, plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft each filed their notices of claim in due and proper form and as a result thereof each obtained the release of $10,000 principal amount and income on the remaining money and property at not exceeding $10,000 per annum. Certain administration expense was deducted and withheld at the respective times of the allowances of said claims. Prior thereto the Alien Property Custodian had deducted from the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, certain large amounts to cover the fees and commissions alleged to be due to depositaries and other persons for the costs and expenses of collecting, securing, and safeguarding the property of the two claimants. In this suit the plaintiff is not endeavoring to recover any portion of said commissions alleged to have been paid to depositaries or any other persons for the purpose of collecting and securing the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft or for the administration expense deducted and withheld under said allowances made pursuant to the provisions of said Winslow Act, but in so doing the plaintiff does not waive its rights to claim, by way of amendment to this bill or otherwise, and to recover all or a part of the amounts so paid out of its property and that of Holzverkohlungs-Industrie Aktiengesellschaft.

7. Pursuant to the provisions of the Trading with the Enemy Act as amended by the Settlement of War Claims Act of 1928, the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft in 1928 filed as required under that act their respective notices of claim called "war claims", being numbers 608 and 851, respectively, claiming all property held by the Alien Property Custodian for them, but consenting to the temporary withholding of 20% of principal as provided by law. These claims were in due course allowed, and the Alien Property Custodian released to the plaintiff and to Holzverkohlungs-Industrie Aktiengesellschaft, respectively, various sums of money representing principal and income held by him to be payable to said two claimants pursuant to said act, withholding, however, from the principal amount 20% thereof and also certain amounts for United States income taxes tentatively computed, all as provided by said act, as well as certain other amounts which are immaterial to the issues of this suit. He also deducted 2% administration or administrative expense as herein set forth more fully.

In securing the release of property, the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft each of them duly complied with all of the requirements of law and all regulations issued thereunder and did and performed all the things required as conditions precedent to the allowance of their respective claims and the release and payment of the money and other property belonging to them and held by the Alien Property Custodian and/or the Treasurer of the United States.

8. Whenever the Alien Property Custodian released any property under said war claims either by way of principal or income, he wrongfully, unlawfully, and illegally deducted and withheld from the money belonging to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, an amount equal to 2% on the

total principal amounts paid over to the claimants and on the respective 20% amounts withheld, as above set forth, and, furthermore, upon the payment of income to them the Alien Property Custodian wrongfully, unlawfully, and illegally withheld 2% of the income payable to the two claimants. The amounts so wrongfully, unlawfully, and illegally deducted and withheld by the Alien Property Custodian in the aggregate amount of $60,213.68, and the dates on which the amounts so withheld and deducted were as follows:

6

Deutsche Gold- und Silber Scheideanstalt	Holzverkohlungs-Industrie Aktiengesellschaft	Date
	[1] $14,009.50	1/3/29.
	6,185.75	1/19/29.
[1] $29,867.85		4/5/29.
8,022.47		4/26/29.
	536.68	6/7/29.
396.81		7/20/29.
	15.43	1/9/30.
[1] 595.09		1/13/30.
	.16	9/30/30.
188.68		11/13/30.
195.26		1/27/31.
$39,466.16	$20,747.52	
Total	$60,213.68	

[1] 2% deducted and withheld from principal, other deductions from income.

9. The 2% so deducted from principal and income in each case represented what the Alien Property Custodian has called "administration expense" or "administrative expense." Money so deducted and withheld was deposited by the defendant, Howard Sutherland, as Alien Property Custodian, either into a special fund kept by the Alien Property Custodian at the Commercial National Bank of Washington, D.C., or into a special fund kept or maintained with the defendant, Walter O. Woods, as Treasurer of the United States, in the Treasury, known as "Administration fund no. 8", for the account or the credit of the Alien Property Custodian. Said fund at the Commercial National Bank was kept for the purpose of enabling the Custodian to withdraw amounts more quickly than by having to resort in the case of each expenditure to the somewhat cumbersome procedure of securing the issuance of Treasury warrants against his account with the Treasury. The balance at the Commercial National Bank has been and is generally kept lower than $300,000.00. Into said funds have been and are being deposited from time to time by the Alien Property Custodian amounts

7 representing similar deductions and holdings from the property of numerous other claimants. Out of said funds, the defendant, Howard Sutherland, as Alien Property Custodian, has been, and is now from time to time, withdrawing and expending various sums, (a) for paying the administration expenses of his own office, and (b) for paying to American, neutral, and allied nationals amounts equal to the administration expenses previously deducted from property returned to them, which deductions were held

to have been illegal by the Supreme Court of the United States in the case of Escher, ancillary administrator of the estate of Jak. Robert Sigg-Fehr et al. v. Woods et al., 281 U.S. 376, decided April 28, 1930. Said decision is hereafter referred to as the Sigg-Fehr decision. The plaintiff is advised, believes, and therefore avers that on December 31, 1928, said special fund in the Treasury amounted to $1,047,103.49, and said fund in the Commercial National Bank amounted to $261,923.66, an aggregate of not less than $1,309,027.15 (Annual Report of the Alien Property Custodian for 1928, page 5). Since that date the Alien Property Custodian has paid out of said two funds amounts for the administration expenses of his office and amounts to claimants under the Sigg-Fehr decision, not in excess of the aggregate amount of $1,150,000 (Annual Reports of the Alien Property Custodian for 1929, p. 5, and for 1930, p. 5, and estimates for the first three months of 1931). Since December 31, 1928, the Alien Property Custodian has deposited into said funds various amounts so that on December 31, 1930, the aggregate of said two funds amounted to $4,143,573.27 (Annual Report of the Alien Property Custodian for 1930, p. 6). Into said two funds have been deposited only amounts representing deductions for administration expenses withheld by the Alien Property Custodian from the property of numerous claimants to whom such property claimed by them had been returned by the Alien Property Custodian. The balance now remaining in said two funds is less than the aggregate deposits of the amounts deducted and withheld by the Custodian from the property of all claimants whose claims have been allowed, and the balance now remaining in said two funds is insufficient to pay in full all claimants, including the plaintiff, whose money has been paid into said funds and thus commingled. The plaintiff is advised, believes, and therefore avers that the defendants have not available any other fund or funds which could be lawfully used to make up the deficiency in the aggregate of said two funds, in order that all persons, whose money had been so taken by the defendants and used to pay the administration expenses of the Alien Property Custodian's office and Sigg-Fehr claims, could be paid in full, if it should be ultimately held that the deductions and withholdings of alleged aministration expenses were wrongful, unlawful, and illegal.

8

Furthermore, the Alien Property Custodian is continuing to withdraw from said funds sums deemed necessary by him for the purpose of paying the administration expenses of his office and for making payments alleged to be due to claimants under the Sigg-Fehr decision. The plaintiff is advised, believes, and therefore avers that any withdrawal from these funds for said purposes or either of them was, is, and will be, wrongful, unlawful, and illegal and violative of the provisions of the Fifth Amendment to the Constitution in that claimants, including the plaintiff, whose money is so used are being deprived of their property without due process of law, except possibly as to a few of the payments made under the Sigg-Fehr decision.

9

10. The defendants have sought to justify their wrongful, illegal and unlawful actions under the provision of Section 24 of the Trading with the Enemy Act as amended from time to time, which reads in part as follows:

"The Alien Property Custodian is authorized * * * to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such * * * expenses shall be paid out of the money or other property * * * in respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this act."

and under the provisions of a statute enacted May 16, 1928, c. 580, 45 Stat. 573, 574, the pertinent provisions of which read as follows:

"All expenses of the office of the Alien Property Custodian authorized by the act entitled 'An act to define, regulate, and punish trading with the enemy, and for other purposes', approved October 6, 1917, as amended, including compensation of the Alien Property Custodian at not to exceed $10,000 per annum, shall be paid from interest and collections on trust funds and other properties under the control of such Custodian."

The Alien Property Custodian in making the aforesaid deductions has erroneously treated the property in his hands as one great trust to be called on to bear the expenses of administration as one homogeneous whole, whereas the plaintiff is advised, believes, and therefore avers that under the Trading with the Enemy Act, as amended, and under any statutes supplemental thereto, the Alien Property Custodian may lawfully withhold and deduct in each instance only the actual and necessary administrative expenses incurred in securing certain property or protecting or administering it. The deduction and withholding from the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, of more than was necessary for said purposes deprived them of their property without due process of law in contravention of the fifth amendment of the Constitution. As stated above in paragraph 6 hereof, the Alien Property Custodian had long prior to the allowances of the war claims of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, paid out of their property large sums of money alleged to cover the costs and expenses of securing and protecting said property.

11. In making the aforesaid deductions of 2% from the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, the Alien Property Custodian has not shown, in any statements furnished to the plaintiff or in any other manner whatsoever, what if any portion of the 2% deducted as aforesaid was necessary for securing, protecting, or administering the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, and what were the number of hours of work spent by and the rate of compensation paid to those employees of the Alien Property Custodian who performed any such necessary services. The plaintiff has no such records. If any such records exist at all, they would be solely within the custody of the Alien Property Custodian. The plaintiff is advised, believes, and therefore avers that the Alien Property Custodian has neither made nor kept any records which

would show what part of the 2% deducted was expended necessarily for the purpose of, and was attributable to, the securing or the protecting or the administering of the property of the two claimants.

11 12. Section 9 (a) of the Trading with the Enemy Act, as amended, provides that if the property claimed is not released: "* * * claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established, the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated."

The plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft claimed in their aforesaid war claims the property now claimed by the plaintiff herein and wrongfully, unlawfully, and illegally withheld by the defendants, all as hereinbefore set forth.

13. The plaintiff further says that, despite the provisions of section 9 (a) above quoted, unless the defendants and each of them are enjoined by a preliminary injunction from withdrawing from said funds the money belonging to it, or, unless the defendants and each of them are ordered to segregate from said funds and deposit separately money belonging to the plaintiff and so deposited as aforesaid by the Alien Property Custodian, its money will be
12 wrongfully, unlawfully, and illegally withdrawn by the Alien Property Custodian and/or the Treasurer of the United States and used for the purpose of paying Sigg-Fehr claims and the general administration expenses of the office of the Alien Property Custodian in the manner described above, to the irreparable injury of the plaintiff and for which the plaintiff will have no redress or remedy.

Wherefore, the plaintiff prays as follows:

1. That process issue out of the court directed against the defendants, Howard Sutherland and Walter O. Woods, both individually and as Alien Property Custodian and Treasurer of the United States, respectively, requiring them to answer the exigencies of this bill, answers under oath being waived.

2. That the defendants, both individually and in their official capacities, and each of them, be required to make an accounting herein to the plaintiff for and in respect of all sums wrongfully, unlawfully,

and illegally deducted and withheld by the defendant, Howard Sutherland, and placed in either of said funds and belonging to the plaintiff.

3. That the court order and direct the defendants to pay over to the plaintiff the aforesaid sum of $60,213.68 and so much more as may be found payable to it, with interest thereon.

4. That the court declare the existence of, and fix upon said funds or either of them, a lien in the favor of the plaintiff in the aggregate amount of $60,213.68 or such greater amount as shall be shown to have been wrongfully, unlawfully, and illegally deducted and withheld by the defendants or either of them from its property or that of Holzverkohlungs-Industrie Aktiengesellschaft and deposited therein.

13 5. That, pending the determination of this suit, the court will grant and issue a preliminary injunction prohibiting the defendants, both individually and in their official capacities, or either of them from paying out from the aforesaid funds to anyone but the plaintiff any of the money now claimed by the plaintiff in this suit, or, in the alternative, that they and each of them be directed to place in a separate and distinct fund the money now claimed by the plaintiff in this suit.

6. That, if the court deem it advisable and necessary, a receiver be appointed to take possession and control of said funds and to hold the same until final disposition of this suit or until otherwise directed by the court.

7. For such other and further relief as the court may deem necessary and proper.

DEUTSCHE GOLD UND SILBER
SCHEIDEANSTALT VORMALS ROESSLER.
By RICHARD H. WILMER,
Attorney.

RICHARD H. WILMER,
DOUGLAS L. HATCH,
Attorneys for the Plaintiff.

Of Counsel:
CRAVATH, DEGERSDORFF, SWAINE & WOOD.

14 DISTRICT OF COLUMBIA, *ss:*

Richard H. Wilmer, being duly sworn, upon oath deposes and says that he is one of the attorneys for Deutsche Gold und Silber Scheideanstalt vormals Roessler, the plaintiff whose name is subscribed to the foregoing bill of complaint; that the plaintiff is absent from, and none of its officials are present in, the District of Columbia; that he has read said bill and knows the contents thereof, and verily believes the facts therein stated to be true.

RICHARD H. WILMER.

Subscribed and sworn to before me this 14th day of April, 1931.

[NOTARIAL SEAL.] JOHN W. CRAGUN,
Notary Public, District of Columbia.

15 AMENDMENTS TO BILL FOR RECOVERY OF MONEY BELONGING TO PLAINTIFF AND HELD BY THE DEFENDANTS FOR INJUNCTION AND OTHER RELIEF.

Filed June 7, 1932.

The plaintiff with leave of court first obtained, hereby amends its original bill filed herein on the 15th day of April 1931, in the following manner:

Paragraph 6 of the bill is amended to read as follows:

"6. Subsequent to the enactment of an amendment to the Trading with the Enemy Act approved March 4, 1923, and known as the 'Winslow Act,' plaintiff and Holzverkohlungs Industrie Aktiengesellschaft each filed their notices of claim in due and proper form, being given numbers 19196 and 21573, respectively, by the Alien Property Custodian. As a result thereof, each obtained the release of $10,000 principal amount and income on the remaining property at not exceeding $10,000 per annum. At the time of payment by the Custodian of the foregoing principal and income amounts, there was deducted by him a so-called administration expense amounting to 1% of the amounts as released (except in one instance as to
16 each claimant 2% was deducted), which was withheld by him, as more fully hereinafter set forth.

"Prior thereto the Alien Property Custodian had deducted from the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, certain large amounts, namely, not less than $40,251.74 in the case of the plaintiff and not less than $13,608.12 in the case of Holzverkohlungs-Industrie Aktiengesellschaft, to cover the fees, costs, and commissions alleged to be due to depositaries or other persons for the costs and expenses of collecting, securing, and safeguarding the property of the two claimants. In this suit the plaintiff is not endeavoring to recover any portion of said fees, costs, and commissions deducted by the Alien Property Custodian and alleged by him as set forth in this subparagraph to have been paid to such depositaries and other persons, but in so doing the plaintiff does not waive its rights to claim, by way of amendment to this bill or otherwise, recovery of all or part of the amounts so paid out of its property and that of Holzverkohlungs-Industrie Aktiengesellschaft."

The bill is further amended by adding after paragraph 7, paragraph 8 (a) as follows:

"8. (a) Whenever the Alien Property Custodian released any property under the claims filed and allowed under the 'Winslow Act' set forth in paragraph 6 hereof either by way of principal or income, he wrongfully, unlawfully, and illegally deducted and withheld from the money belonging to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, an amount equal to 1% on the total principal and income amounts paid over to the claim-
17 ants (except that in one instance as to each of the claimants 2% was deducted). The amounts so wrongfully, unlawfully, and illegally deducted and withheld by the Alien Property Custodian

in the aggregate amount of $1,400 and the dates on which the amounts so withheld and deducted were as follows:

Deutsche Gold und Silber Scheideanstalt	Holzverkohlungs-Industrie Aktiengesellschaft	Date
[1] $100		4/19/24
	[1] $100	5/31/24
	100	4/22/25
100		4/20/26
	100	7/8/27
	200	7/8/27
200		9/29/27
100		10/5/27
100		10/26/27
	100	10/26/27
	[2] 100	3/15/28
[2] 100		6/19/28
700	700	

[1] 1% deducted and withheld from principal—other amounts deducted from income.
[2] 2% deducted and withheld from $5,000 income released.

The bill is further amended by amending paragraph 8 to read as follows:

"8. (b) Whenever the Alien Property Custodian released any property under said War Claims either by way of principal or income, he wrongfully, unlawfully, and illegally deducted and withheld from the money belonging to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, an amount equal to 2% on the total principal amounts paid over to the claimants and on the respective 2% amounts withheld, as above set forth, and, furthermore, upon the payment of income to them the Alien Property Custodian wrongfully, unlawfully, and illegally withheld 2% of the income payable to the two claimants. The amounts so wrongfully, unawfully, and illegally deducted and withheld by the Alien
18 Property Custodian in the aggregate amount of $60,346.52, and the dates on which the amounts so withheld and deducted were as follows:

Deutsche Gold und Silber Scheideanstalt	Holzverkohlungs Industrie Aktiengesellschaft	Date
	[1] $14,009.50	1/ 3/29
	6,185.75	1/19/29
		4/5/29
[1] $29,867.85		4/26/29
	536.68	6/ 7/29
596.81	15.43	7/20/29
	15.43	1/ 9/30
[1] 595.09		1/13/30
132.84		1/24/30
	.16	9/30/30
188.68		11/18/30
195.26		1/27/31
$39,599.00	$20,747.52	
Total	$260,346.52	

[1] 2% deducted and withheld from principal, other deductions from income.

The bill is further amended by inserting after paragraph 8 (b) and before paragraph 9 of the bill two paragraphs as follows:

"8. (c) The plaintiff is advised and therefore avers that on and after March 4, 1923, whenever the Treasury Department credited the account of the Alien Property Custodian with Treasury interest earned on the various monies deposited with the Treasury and held in the name of the Custodian for the various claimants, the Alien Property Custodian wrongfully, unlawfully, and illegally deducted an amount equal to 1% in certain instances and 2% in certain other instances, as appears from the table below, of such credited income before allocating such income to the credit of the various claimants' trusts. The amounts so wrongfully, unlawfully, and illegally deducted and withheld by the Alien Property Custodian in the aggregate amount of not less than $8,142.31 and the approximate dates on which the amounts so withheld and deducted, together with
19 the Treasury interest periods and percentages, were as follows:

DEUTSCHE GOLD-UND SILBER SCHEIDEANSTALT

Entry date	Treasury interest period	Amount of Treasury interest Credited	Represents	% deducted	Amount deducted
4/14/25	3/3/23-3/3/24	$38,765.08	99%	1%	$391.56
4/14/25	3/3/24-3/3/25	77,930.66	99%	1%	787.17
6/18/26	3/3/25-3/15/26	66,350.85	99%	1%	670.21
4/27/27	3/15/26-3/15/27	78,271.16	99%	1%	790.62
10/22/27	3/15/27-9/15/27	36,152.71	99%	1%	365.17
4/7/27	9/15/27-3/15/28	37,364.38	98%	2%	762.54
11/16/28	3/15/28-9/15/28	36,605.15	98%	2%	747.04
5/9/29	9/15/28-3/15/29	29,840.70	98%	2%	608.99
10/23/29	3/15/29-9/15/29	6,642.08	98%	2%	135.55
6/17/30	9/15/29-3/15/30	9,576.04	98%	2%	195.43
11/10/30	3/15/30-9/15/30	9,620.77	98%	2%	196.34
5/9/31	9/15/30-3/14/31	4,726.64	98%	2%	96.36
12/21/31	3/14/31-9/15/31	4,636.33	98%	2%	94.62
Total					$5,841.70

HOLZVERKOHLUNGS-INDUSTRIE AKTIENGESELLSCHAFT

	3/4/23-3/4/24	$16,399.71	99%	1%	$165.65
	3/4/24-3/4/25	36,779.99	99%	1%	371.52
8/18/26	3/4/25-3/15/26	30,944.93	99%	1%	312.58
4/27/27	3/15/26-3/15/27	36,424.01	99%	1%	367.91
10/22/27	3/15/27-9/15/27	16,917.89	99%	1%	170.88
4/7/28	9/15/27-3/15/28	17,427.41	98%	2%	355.66
11/16/28	3/15/28-9/15/28	17,010.93	98%	2%	347.16
5/9/29	9/15/28-3/15/29	9,473.77	98%	2%	193.34
10/23/29	3/15/29-9/15/29	771.40	98%	2%	15.74
6/17/30	9/15/29-3/15/30	8.19	98%	2%	.17
Total					$2,300.61
Grand total					$8,142.31

Neither the defendant, the Alien Property Custodian, nor the defendant, the Treasurer of the United States, nor any of their respective predecessors in office, ever advised either the plaintiff or Holzverkohlungs-Industrie Aktiengesellschaft of the deductions of the foregoing amounts set forth in this paragraph, nor do any of the statements furnished by the Alien Property Custodian or any of his predecessors in office to plaintiff and Holzverkoh-
20 lungs-Industrie Aktiengesellschaft show said deductions, and it was only recently that plaintiff's counsel ascertained that such deductions were made and that the amounts thereof were withheld.

"8. (d) The amounts of 1% and 2%, respectively, so wrongfully, unlawfully, and illegally deducted and withheld by the Alien Property Custodian as set forth in paragraphs 8 (a), 8 (b), and 8 (c) hereof, do not bear nor were they intended to bear any relation to the cost of services actually rendered or labor actually performed by the defendants herein, their predecessors in office or any of their employees in securing, protecting, and administering the property of the claimants. These amounts so wrongfully, unlawfully, and illegally deducted and withheld as set forth in paragraphs 8 (a), 8 (b), and 8 (c) hereof, total in their entirety not less than $69,888.83, which is in addition to the amounts of $40,251.74 deducted from the property of plaintiff and $13,608.12 deducted from the property of Holzverkohlungs-Industrie Aktiengesellschaft, fees, costs, and commissions as set forth in the second paragraph of paragraph 6 hereof, as amended. The plaintiff claims that it is entitled to recover herein said amount of $69,888.83 and such greater amount as may be shown to have been wrongfully, unlawfully, and illegally deducted and withheld by the defendants or either of them or their predecessors in office from the properties of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, together with interest thereon."

Paragraph 9 of the bill is amended by substituting in lieu of the first two sentences thereof commencing with the words "The 2% so deducted" in the first line of said paragraph and concluding with the word "Custodian" in the twelfth line of said paragraph the following:

"9. The 1% so deducted from principal and income as set forth in paragraph 8 (a) hereof and the 2% so deducted from principal and income as set forth in paragraph 8 (b) hereof in each case represented what the Alien Property Custodian has called 'administration expenses' or 'administrative expense.' The 1% and 2% amounts deducted from income in the case of Treasury interest as set forth in paragraph 8 (c) hereof, has not to the knowledge of this plaintiff been designated as any charge, except, possibly, as 'commission.' Money so deducted and withheld was deposited by the defendant, Howard Sutherland, and/or his predecessors in office, as Alien Property Custodian, either into a special fund kept by them at the Commercial National Bank of Washington, D.C., or into a special fund kept or maintained with the defendant, Walter O. Woods, and/or his predecessors in office, as Treasurer of the United States, in the Treasury, known as 'Administration Fund No. 8', and/or some other Treasury fund, for the account or the credit of the Alien Property Custodian."

The bill is further amended by striking out in the first line of paragraph 11 thereof the words "of 2%", making that line read as follows: "11. In making the aforesaid deductions from".

The bill is further amended by striking in the fifth line of paragraph 11 the words "2%" and substituting therefor the word "amounts", making said fifth line read as follows: "any other manner whatsoever, what if any portion of the amounts".

The bill is further amended by striking out in the sixth line of paragraph 11 thereof the word "was" and substituting therefor the word "were", making said sixth line read as follows: "deducted as aforesaid were necessary for securing, protecting".

The bill is further amended by striking out in the seventeenth line of paragraph 11 thereof the words "2%" and substituting therefor the words "amounts so" and striking out the word "was" in said line and substituting therefor the word "were", making said line 17 of said paragraph 11 read as follows: "would show what part of the amounts so deducted were expended neces-".

22 The bill is further amended by amending the third and fourth prayers thereof to read as follows:

"3. That the court order and direct the defendants to pay over to the plaintiff the sum of $69,888.83 and so much more as may be found payable to it, with interest thereon.

"4. That the court declare the existence of, and fix upon said funds or either of them, a lien in the favor of the plaintiff in the aggregate amount of $69,883.83 or such greater amount as shall be shown to have been wrongfully, unlawfully, and illegally deducted and withheld by the defendants or either of them from its property or that of Holzverkohlungs-Industrie Aktiengesellschaft and deposited therein."

Otherwise said bill as originally filed remains unchanged and unamended.

DEUTSCHE GOLD-UND SILBER SCHEIDEANSTALT VORMALS ROESSLER.
By RICHARD H. WILMER, *Attorney.*

RICHARD H. WILMER,
DOUGLAS L. HATCH,
Attorneys for Plaintiff.

Of counsel:
CRAVATH, DE GERSDORFF, SWAINE & WOOD.

23 DISTRICT OF COLUMBIA, *ss:*

Richard H. Wilmer, being first duly sworn according to law upon oath deposes and says, that he is one of the attorneys for Deutsche Gold-und Silber Scheideanstalt vormals Roessler, the plaintiff whose name is subscribed to the foregoing amendments to the bill of complaint; that the plaintiff is absent from and none of its officials are present in the District of Columbia; that he has read over the foregoing amendments to the bill for recovery of money belonging to the plaintiff and held by the defendants and for injunction and other relief and knows the contents thereof and verily believes the facts therein stated to be true.

RICHARD H. WILMER.

Subscribed and sworn to before me this 7th day of June 1932.

[NOTARIAL SEAL.] JOHN W. CRAGUN,
Notary Public, D.C.

Receipt of a copy of the foreging amendments is hereby acknowledged this 7th day of June 1932.

THOMAS E. RHODES,
Attorney for Defendants.

Let these amendments to the bill be filed. Entered June 7, 1932.

JESSE C. ADKINS, *Justice.*

24 ANSWER TO THE AMENDED BILL OF COMPLAINT

Filed September 30, 1932

Now come the defendants, separately and severally, and for their separate and several answers to the amended bill of complaint say:

I. That the plaintiff has not stated sufficient facts in the amended bill of complaint to entitle it to equitable relief under section 9 of the Trading with the Enemy Act.

II. That the amended bill of complaint does not state a cause of action.

III. That the amended bill of complaint does not state sufficient facts to entitle the plaintiff to the equitable relief prayed for in said bill.

IV. That this court is without jurisdiction to grant the relief prayed for in the amended bill of complaint.

V. That the plaintiff has no right to sue the Alien Property Custodian and the Treasurer of the United States individually.

25 VI. That the plaintiff has no right to invoke the general jurisdiction in equity of this court.

And now, not waiving the many defects and insufficiencies of the amended bill of complaint, but specifically insisting upon each of the objections thereto as hereinbefore set forth, these defendants, for their separate and several answers to the amended bill of complaint, separately and severally say:

1. They admit the averments of paragraph I of the amended bill of complaint.

2. They admit the averments of paragraph 2 of the amended bill of complaint.

3. The allegations of paragraph 3 of the amended bill of complaint are conclusions of law which these defendants are not required to answer, but insofar as they may be deemed to be allegations of fact, they deny the same.

4. Upon information and belief the defendants admit all of the averments of paragraph 4 of the amended bill of complaint.

5. Upon information and belief the defendants admit the averments of paragraph 5 of the amended bill of complaint.

6. Answering the averments of paragraph 6 of the amended bill of complaint the defendants say that on September 24, 1923, the plaintiff filed a notice of claim (no. 19,196) for the return of certain property and cash, alleged to belong to the plaintiff, and held by the Alien Property Custodian in trust no. 12,009, and on March 28, 1924, the Alien Property Custodian allowed said claim in the sum of $10,000, less the sum of $100, deducted by the Custodian at the time of the allowance of said claim as the Custodian's administrative expenses upon said $10,000; that on December 1, 1923, the said Holzverkohlungs-Industrie Aktiengesellschaft filed a notice of claim (no. 21,573) for the return of certain property and cash,

26 alleged to belong to said Holzverkohlungs-Industrie Aktiengesellschaft, and held by the Alien Property Custodian in trust no. 12,055, and on May 15, 1924, the Alien Property Custodian allowed said claim in the sum of $10,000 less the sum of $100, deducted by the Custodian at the time of the allowance of said claim

as the Custodian's administrative expenses upon said $10,000; that the said amounts deducted as administrative expenses from each of said $10,000 allowances were one per centum of the amount of the allowance; that the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft each accepted the sum of $9,900 from the Alien Property Custodian as a full compliance with the order of allowance of their respective claims, and each signed and filed with the Alien Property Custodian a receipt in which it conceded, confirmed, and expressly recognized the right of the Custodian to deduct said administrative charges as well as the right to deduct from their seized properties a flat-rate charge for administrative expenses calculated upon a percentage basis. The said receipt of the plaintiff, executed under oath, was filed with the Custodian on May 20, 1924, at which time the Custodian paid to said plaintiff $9,900. The said receipt of Holzverkohlungs-Industrie Aktiengesellschaft, executed under oath, was filed with the Custodian on July 7, 1924, at which time the Custodian paid to said Holzverkohlungs-Industrie Aktiengesellschaft $9,900.

Further answering said paragraph, the defendants say that prior to the allowance of said claims for $10,000 certain amounts were deducted from the seized property, dividends, and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft,
27 respectively, to cover certain charges and expenses paid to depositaries and other persons for services, costs and expenses in collecting said seized property and dividends and income and obtaining the possession thereof and safeguarding the same until part of the seized property of said plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft could be liquidated and the entire assets, less the amounts so deducted, could be turned over to the Alien Property Custodian at Washington, D.C., as appears from exhibits A and B attached hereto and made a part hereof. The amounts deducted as shown by said exhibits prior to the allowance of said claims for $10,000 each were duly deducted and paid out of the seized property, dividends and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft pursuant to the provisions of the Trading with the Enemy Act, as amended, and the Executive orders and proclamations of the President issued thereunder, and such deductions were necessary and incident to the collection and reducing to possession of such property.

The defendants deny that the amounts alleged by paragraph 6 of the amended bill of complaint to have been deducted were "large amounts" as alleged in said paragraph, or that said amounts were wrongfully, unlawfully, and illegally deducted, but say that in comparison with the amount of property administered and the work done thereon incident to said deductions such deductions were very small. The defendants admit that the plaintiff is not seeking in this suit to recover any portion of the amounts paid by the Alien Property Custodian to said depositaries or other persons for the purpose of collecting, securing and safeguarding the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft.

28 7. Answering the averments of paragraph 7 of the amended bill of complaint, the defendants admit that during the year 1928, after the enactment of the Settlement of War Claims Act of

March 10, 1928, and pursuant thereto the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft filed with the Alien Property Custodian certain notices of claim entitled "War Claims Nos. 608 and 851", respectively, in which they claimed the property held by the Alien Property Custodian which belonged to them at the time of the seizure thereof, subject to the right of the Alien Property Custodian to retain and invest 20 per centum of the principal of said property as provided by said Settlement of War Claims Act, and the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft duly consented as provided by law to the retention and investment by the Alien Property Custodian of said 20 per centum. Such claims thereafter were duly allowed by the Alien Property Custodian less 20 per centum of the principal in each claim, which the Alien Property Custodian is required to retain and invest under the Settlement of War Claims Act, and 2 per centum calculated upon both the principal and interest which the Alien Property Custodian deducted as the administrative expenses of his office for and in connection with the securing the possession, collection, and control of the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft and in protecting, managing, and administering the same from the time of the seizure thereof until the return of 80 per centum of the principal and various items of income during the years 1929, 1930, and 1931, and for returning said 80 per centum and said various items of income to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft.

29 The defendants deny that the said 2 per centum deducted as administrative expenses was deducted as alleged in the plaintiff's amended bill of complaint.

The defendants deny that the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft have complied with all of the requirements of law and all regulations issued thereunder, or that they did or performed anything required as a condition precedent to the allowance of their alleged claims for the release and payment to them of the 20 per centum retained by the Alien Property Custodian for investment as provided by the Settlement of War Claims Act or the 2 per centum deducted as the administrative expenses of the Custodian's office.

8. (a) Answering the averments of paragraph 8 (a) of the amended bill of complaint, the defendants say that the Alien Property Custodian deducted from the principal of the Winslow Claims referred to in paragraph 6 of the amended bill of complaint, and the payments of income to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft in amounts not exceeding $10,000 per annum for the period between March 4, 1923, and March 10, 1928, an administrative charge of 2 per centum upon said principal and income, except upon the last payment of income to each claimant in which there was deducted 2 per centum, and that the items going to make up said administrative charges were deducted on the dates alleged in paragraph 8 (a) of the amended bill of complaint. The total amount so deducted from said principal and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft amounted to $1,400. The defendants deny that the Alien Property Cus-

todian wrongfully, unlawfully, and illegally deducted and withheld said administrative charges as alleged in said paragraph.

30 8. (b) The defendants admit that the Alien Property Custodian deducted the said sums totalling $39,599.00 from the seized property of the plaintiff and income thereon, and deducted said sums totalling $20,747.52 from the seized property of Holzverkohlungs-Industrie Aktiengesellschaft and income thereon for administrative expenses, and that the items going to make up said administrative charges were deducted on the dates alleged in paragraph 8 (b) of the amended bill of complaint. The total amount deducted from the property of the plaintiff and from the property of Holzverkohlungs-Industrie Aktiengesellschaft, under allowances under the Settlement of War Claims Act, amounted to $60,346.52. The total amount of the principal of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft amounted to the sum of $2,243,622.00 and the total amount of the income which accrued thereon after the seizure of the principal of the plaintiff and said Holzverkohlungs-Industrie Aktiengesellschaft amounted to $911,846.31. The said administrative charges were calculated upon both the principal and the income, but they were deducted from the cash of the plaintiff and the cash of Holzverkohlungs-Industrie Aktiengesellschaft, held in trusts nos. 12,009 and 12,055, which contained both principal and income, and the total amount of all of said administrative expenses deducted from the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, is a great deal less than the total amount of income which accrued upon their respective properties.

The defendants deny that the Alien ~~Property Custodian~~ wrongfully, unlawfully, and illegally deducted and withheld the said 2 per centum deducted as administrative expenses from the

31 property from the income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, and they further deny that the plaintiff is entitled to recover the amounts so deducted as administrative expenses or any part thereof.

Further answering said paragraph, the defendants say that the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft accepted the said several payments of principal and income after they had been notified in writing of the deductions for administrative expenses enumerated in paragraph 8 (b) of the amended bill of complaint, and that they accepted the payments of principal and income in question without objection to said deductions, and neither the plaintiff nor Holzverkohlungs-Industrie Aktiengesellschaft protested against the said deductions for administrative expenses, but they in fact consented to the Alien Property Custodian making such deductions for the administrative expenses of his office for and in connection with the securing of the possession, collection, and control of the seized property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft and in protecting and administering the same and the accrued income thereon, and the return of the said amounts to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively.

8. (c) Answering the averments of paragraph 8 (c) of the amended bill of complaint the defendants say that after March 4,

1923, whenever the Treasury Department credited the account of the Alien Property Custodian with the so-called Treasury interest earned on the seized moneys of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft deposited by the Alien Property Custodian with the Secretary of the Treasury, the Alien Property Custodian deducted therefrom an administrative charge of 1 per centum up until November 1, 1927, and since that time has deducted an administrative charge of 2 per centum. The defendants admit that such administrative deductions from the so-called Treasury income credited to the plaintiff amounted to $5,841.70 and that the administrative deductions from the so-called Treasury income credited to Holzverkohlungs-Industrie Aktiengesellschaft amounted to $2,300.61, and that the items going to make up said administrative deductions were deducted on the dates set forth in paragraph 8 (c) of the amended bill of complaint except that the third date of entry of the plaintiff is August 18, 1926, and not June 18, 1926, as alleged in paragraph 8 (c) of the amended bill of complaint. The defendants deny that the amounts so deducted from the so-called Treasury income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft were wrongfully, unlawfully, and illegally deducted and withheld by the Alien Property Custodian as alleged in said paragraph.

The defendants deny the allegations contained in the last subparagraph of paragraph 8 (c) of the amended bill of complaint.

Further answering the averments of said paragraph the defendants say that neither the Alien Property Custodian nor the Treasurer of the United States was or is required by statute or any Executive order or proclamation of the President to advise the plaintiff or Holzverkohlungs-Industrie Aktiengesellschaft of the deductions referred to in paragraph 8 (c) of the amended bill of complaint or to furnish them with any statements with respect thereto.

33 8. (d) The defendants deny the allegations of the first sentence of paragraph 8 (d) of the amended bill. They admit that the amounts deducted by the Alien Property Custodian for administrative charges from the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft and claimed by the plaintiff in this suit total the sum of $69,888.83. The defendants deny that the said sums aggregating $69,888.83 were wrongfully, unlawfully, and illlegally deducted and withheld as alleged in said paragraph of said bill, and they deny that the plaintiff is entitled to recover said sum of $69,888.83, or any greater or less amount.

9. The defendants deny the allegations contained in the first two sentences of paragraph 9 of the amended bill of complaint. They admit the remaining allegations of said paragraph except the last subparagraph thereof. They deny that the Alien Property Custodian is continuing to withdraw from said funds sums deemed necessary "for making payments *alleged to be* due to claimants under the Sigg-Fehr decision." No money is returned by the Alien Property Custodian except that which is found to be lawfully due and payable to a proper claimant under the Trading with the Enemy Act. A mere allegation of ownership is insufficient to support a recovery.

The defendants further deny that the withdrawal by the Alien Property Custodian from the funds deducted by him for administra-

tive expenses to pay the expenses of his office and to make payments to proper claimants coming under the category of the so-called Sigg-Fehr decision of the Supreme Court of the United States is wrongful, unlawful; and illegal and in violation of the provisions of the Fifth Amendment to the Constitution of the United
34 States or that such withdrawal deprives the plaintiff of its property without due process of law. The plaintiff is a German enemy national within the meaning of the Trading with the Enemy Act and its enemy status still continues insofar as its sequestered property is concerned, and being such an enemy the disposition of its seized property was and is now entirely within the discretion of the United States and the plaintiff has no right to raise the objection of the fifth amendment to the Constitution of the United States.

10. Answering the averments of paragraph 10 of the amended bill of complaint the defendants deny that they have sought to justify any wrongful, unlawful, or illegal actions. They deny that they have committed or done any wrongful, unlawful, or illegal acts. They deny that the Alien Property Custodian in making the aforesaid deductions from the seized property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft and other German enemy nationals has treated the seized property in his hands as one great trust to be called on to bear the expenses of administration as one homogeneous whole. The allegation "*that under the Trading with the Enemy Act, as amended, and under any statutes supplemental thereto, the Alien Property Custodian may lawfully withhold and deduct in each instance only the actual and necessary administrative expenses incurred in securing certain property or protecting or administering it*" is a conclusion of law which these defendants are not required to answer, but insofar as it may be deemed to be an allegation of fact they deny the same. The defendants deny that they have deducted and withheld from the seized property and income of the plaintiff and Holzverkohlungs-
35 Industrie Aktiengesellschaft more than was necessary and proper in securing the possession, collection, and control of the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, and for protecting and administering the same. They deny that any of the deductions made by the Alien Property Custodian from the seized property and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft deprived them of their property without due process of law, or that said deductions for administrative expenses were in contravention of the fifth amendment to the Constitution; and, except as in this paragraph admitted or denied, they deny each and every allegation contained in said paragraph of the amended bill.

11. Answering the averments of paragraph 11 of the amended bill of complaint, the defendants say that the Alien Property Custodian is not required by statute or any Executive order or Proclamation of the President to furnish to the plaintiff any statement or statements showing what, if any, portion of the amounts deducted as administrative expenses was necessary for securing, protecting, of administering the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, respectively, and what were the number

of hours spent by and the rate of compensation paid to those employees of the Alien Property Custodian who performed any such necessary services.

Further answering said paragraph, the defendants say that the Alien Property Custodian has from time to time furnished the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft with statements of account which show that the amounts deducted as administrative expenses from their seized property and income were fair, reasonable, proper and necessary charges for the Office of the
36 Alien Property Custodian in connection with the securing of the possession, collection, and control of the property and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, and for managing, persevering, protecting, and administering the same; that at the time of the allowance of the claims of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, they were furnished with statements from the Alien Property Custodian showing the property held by the Custodian which belonged to them at the time of seizure, together with the accrued income thereon, and which also showed that the Custodian had deducted an administrative charge of 1 per centum from their Winslow Claims and a charge of 2 per centum from the balance of the property and income credited to their accounts as administrative expenses; that the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft accepted the return of the property under the allowance of their respective claims less said deductions for administrative expenses without protest or objection and that they have consented to the deduction and retention of said 1 per centum and 2 per centum, respectively, by the Alien Property Custodian as the administrative expenses for his office.

Further answering said paragraph of the amended bill and particularly the allegation contained in the last sentence thereof "that the Alien Property Custodian has neither made nor kept any records which would show that part of the amounts so deducted were expended necessarily for the purpose of, and was attributable to, the securing or the protecting or the administering of the property of the two claimants", the defendants say that the Alien Prop-
37 erty Custodian does have records which show that the aggregate amount deducted from the property and income of the plaintiff and Holzverkohlungs-Industrie Aktienggesellschaft was a fair, reasonable, proper, and necessary charge for the office of the Alien Property Custodian in connection with the securing of the possession, collection, and control of the property and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, and for managing, preserving, protecting, and administering the same, and the defendants attach hereto, make a part hereof, and mark "Exhibit C," a detailed statement of specific services rendered by the Office of the Alien Property Custodian in connection with the securing of the possession, collection, and control of the property and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, and in managing, preserving, protecting, and administering the same and returning a part of such property to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft under the Trading with the Enemy Act, as amended by the Settlement of War Claims Act of 1928; and further answering said paragraph the defendants

deny each and every allegation contained therein not admitted by this paragraph.

12. The allegations of paragraph 12 of the amended bill of complaint are conclusions of law which these defendants are not required to answer, but insofar as they may be deemed to be allegations of fact, they deny the same. The defendants admit that the quotation contained in paragraph 12 is a part of section 9 (a) of the Trading with the Enemy Act as amended on March 4, 1923, c. 285, 42 Stat. 1511, but they deny that said section permits this plaintiff to claim, institute a suit in equity in this court for,
38 or to recover any part of the amounts deducted by the Alien Property Custodian as administrative expenses and claimed by the plaintiff in this suit. They deny that the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft claimed in their aforesaid war claims the property now claimed by the plaintiff herein, and they deny that the amount here claimed was wrongfully, unlawfully, and illegally withheld by the defendants as set forth in the amended bill of complaint or otherwise.

13. They deny the allegations of paragraph 13 of the amended bill of complaint.

14. And further answering the amended bill of complaint the defendants deny each and every allegation contained therein which is not fully, specifically, and clearly admitted in this answer.

15. AND FOR A FURTHER AND ADDITIONAL DEFENSE TO THE AMENDED BILL OF COMPLAINT THE DEFENDANTS SAY:

That the administrative charges deducted from the seized property and income thereon of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft were fair, reasonable, proper and necessary charges for the expenses of the Alien Property Custodian in securing the possession, collection, and control of such seized property and in managing, preserving, protecting, and administering the same, and the accrued income thereon, and returning a part thereof to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft; that pursuant to the provisions of the Trading with the Enemy Act, as amended, and the Executive orders and proclamations issued thereunder, the Alien Property Custodian was authorized to deduct a flat rate charge of 2 per centum from the seized property and
39 income credited to the accounts of the plaintiff and Holzverkohlungs-Industrie Aktengeselischaft, and also to deduct an administrative or allocation charge of 2 per centum from the so-called Treasury interest accruing upon the money of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft deposited in the Treasury of the United States with the seized moneys of other persons pursuant to section 12 of the Trading with the Enemy Act, as amended, to cover the necessary expenses of the office of the Alien Property Custodian incident to the collection of said Treasury interest and the allocation of the proportionate share thereof to the accounts of the plaintiff and Holsverkohlungs-Industrie Aktiengesellschaft; that under section 5 (a) of the Trading with the Enemy Act (c. 106, 40 Stat. 415) it was specifically provided that the President "may make such rules and regulations, not inconsistent with the law, as may be necessary and proper to carry out the provisions of this act; and * * * may exercise any power or authority conferred by this act through such officer

or officers as he shall direct"; that section 6 of the Trading with the Enemy Act (c. 106, 40 Stat. 415) provides:

"That the President is authorized to appoint * * * an official to be know as the Alien Property Custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of this act, and to hold, administer, and account for the same under the general direction of the President and as provided in this act. * * * The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this act."

40 That the power vested in the President by section 6 of the Trading with the Enemy Act to employ and fix the compensation of clerks, attorneys, investigators, accountants, etc., for the administration of the provisions of the Trading with the Enemy Act was delegated by him to the Alien Property Custodian by the Executive order of October 29, 1917.

That pursuant to the power vested in the President by the said Trading with the Enemy Act he issued an Executive order on February 26, 1918 (no. 2813), which provided, among other things, as follows:

"The Alien Property Custodian may pay all reasonable and proper expenses which may be incurred in or about securing possession or control of money or other property and in or about collecting dividends, interest and other income therefrom, and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs."

That pursuant to the said power vested in the President by the Trading with the Enemy Act he issued an Executive order on July 16, 1918 (no. 2914), which provided that—

"The Alien Property Custodian shall have the power and authority to do any and all things reasonable and proper in or about the custody, management, administration, protection, preservation, and control of any such property, according to the nature and character of the property and the attendant circumstances * * *;"

and further specifically authorized the Alien Property Custodian—

* * * *to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody, or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic.*"

41 That during the year of 1921 the Alien Property Custodian began to deduct administrative expenses for his office from property seized by the Custodian during the recent war, the deductions being made at the time of the allowance of claims and were based upon a flat-rate charge against such seized property;

that said practice of deducting administrative expenses from the seized property and income of enemy nationals based upon a percentage basis was in force prior to and on March 4, 1923, when Congress enacted section 24 of the Trading with the Enemy Act (c. 285, 4 2Stat. 1516), which provides that—

"*The Alien Property Custodian is authorized to* pay all taxes (including special assessments) heretofore or hereafter lawfully assessed by any body politic against any money or other property held by him or by the Treasurer of the United States under this act, and *to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such taxes and expenses shall be paid out of the money or other property* against which such taxes are assessed or *in respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this act.*"

The fact that the Alien Property Custodian was deducting administrative expenses from seized enemy property in his hands based upon a flat-rate percentage basis was made known to the Congress prior to the enactment of section 24, and said statute recognized such practice.

That by the act of May 16, 1928 (c. 580, 45 Stat. 574), making appropriations for the Executive Office, and sundry independent executive bureaus, etc., for the fiscal year ending June 30, 1929, the Congress specifically provided as follows:

42 "All expenses of the office of the Alien Property Custodian authorized by the act entitled 'An act to define, regulate, and punish trading with the enemy, and for other purposes', approved October 6, 1917, as amended, including compensation of the Alien Property Custodian at not to exceed $10,000 per annum; shall be paid from interest and collections on trust funds and other properties under the control of such custodian."

That from March 4, 1923, to November 1, 1927, the Alien Property Custodian deducted an administrative charge of 1 per centum from property returned to German enemy nationals under the Winslow Act, and an allocation charge of 1 per centum from the Treasury interest accruing upon the funds of German enemy nationals; that since November 1, 1927, the Alien Property Custodian has deducted a flat rate charge of 2 per centum from all of the seized property, and income of German enemy nationals held under the Trading with the Enemy Act, as amended, at the time of the allowance of the claims for such property and income, and has deducted an allocation charge of 2 per centum from the Treasury interest accruing upon the funds of German enemy nationals; that the Congress was advised and had been informed of this practice prior to the enactment of the act of May 16, 1928, and that the said act of May 16, 1928, expressly recognized the right, power, and authority of the Alien Property Custodian to make and to have made such deductions under the authority of the Trading with the Enemy Act and the amendments thereto and the Executive orders and proclamations issued thereunder.

The defendants further aver that the total sum of $69,883.83 deducted from the principal and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft is the same proportionate amount deducted by the Alien Property Custodian from the principal and income of all other German enemy claimants securing the return of their seized property and income under the provisions of the Winslow Act of March 4, 1923, and the Settlement of War Claims Act of March 10, 1928. The defendants further aver that the said amount so deducted and retained as administrative expenses is not excessive and is a fair, just, reasonable, and proper charge or deduction to be made.

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There is attached hereto and made a part hereof, and marked "Exhibit D," a statement showing the revenues and disbursements of the Office of the Alien Property Custodian since its organization in October, 1917.

Further answering the amended bill of complaint the defendants show to the court and allege—

16. That by reason of the management and administration of the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft, referred to in paragraph 4 of the amended bill of complaint, earnings or income in very large amounts were produced and returned to the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft under the authority of the Trading with the Enemy Act, as amended; that the Alien Property Custodian managed and administered the property and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft for over 10 years; that the only charge of the Office of the Alien Property Custodian for such management and administration, other than the charge upon the said $10,000.00 allowances under the Winslow Act, and the small allocation charge on income is the 2 per centum deduction claimed in this suit; that while the Alien Property Custodian has deducted said small flat rate administrative charges from the property of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft for the expenses of his office, there has been produced for the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft by reason of the management and administration by the Alien Property Custodian of their seized property, a net income averaging over 3½ per centum per annum, which was compounded semiannually, while the property was held by these defendants. By reason whereof the defendants submit to the court that the granting of the relief prayed for in the amended bill would be contrary to equity, justice, and good conscience.

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For a further and additional defense to the amended bill of complaint the defendants show to the court and allege—

17. That the plaintiff is precluded and barred from maintaining this suit by the Treaty of Berlin concluded by and between the United States and Germany on August 25, 1921, and proclaimed and made public by the President of the United States on the 14th day of November, 1921.

Further answering the amended bill of complaint the defendants show to the court and allege—

18. That it appears upon the face of the amended bill that no valid cause of action entitling the plaintiff to relief under the Trading with the Enemy Act, as amended, against the defendants is stated

therein, and, therefore, the defendants pray that the amended bill of complaint be dismissed.

Further answering the amended bill of complaint the defendants show to the court and allege—

19. That it appears affirmatively from the amended bill of complaint that the plaintiff is seeking to recover money which it is not permitted to recover under the Trading with the Enemy Act, as amended by the various amendments thereto, and by the Settlement of War Claims Act, and therefore, the defendants pray that the amended bill be dismissed.

Further answering the amended bill of complaint the defendants allege—

45 20. That prior to the commencement of this suit more than 6 years had elapsed since the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft had acknowledged in writing the right of the Alien Property Custodian to deduct a flat-rate charge from their seized property as administrative expenses and that almost 3 years had elapsed since returns of property were made to them under the Settlement of War Claims Act under which the deductions here claimed were made. That the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft and their agents and attorneys had full notice and knowledge of the fact since 1924 that the Alien Property Custodian was deducting a flat-rate charge for administrative expenses from the seized property of enemies, and that at no time did they make any complaint to the Alien Property Custodian about such deductions: that they had ample means and due opportunity to enquire into the matter and facts and fully learn thereof: that by reason whereof, the defendants submit to the court that the plaintiff is estopped in obtaining the relief prayed for and that the granting of such relief would be contrary to equity, justice, and good conscience.

21. That by reason of the facts alleged herein the plaintiff is in laches.

22. That Holzverkohlungs-Industrie Aktiengesellschaft, never having protested against, and having consented to, the aforesaid flat-rate deductions by the Alien Property Custodian from its seized property and income as administrative expenses, its successor, the plaintiff, has no right now to question said deduction.

23. That by reason of the facts alleged herein Holzverkohlungs-Industrie Aktiengesellschaft is in laches.

46 Further answering the amended bill of complaint the defendants show to the court and allege—

24. That the allegations contained in the amended bill of complaint that the deduction by the Alien Property Custodian of the aforesaid flat-rate charges from the seized property and income of the plaintiff and Holzverkohlungs-Industrie Aktiengesellschaft for the administrative expenses of the Custodian was wrongful, unlawful, and illegal, and principally the allegations to that effect contained in paragraphs 8(a), 8(b), 8(c), 8(d), 9, 10, 12, and 13 of the amended bill of complaint, are insufficient, vague, uncertain, and indefinite, in that they are mere conclusions of the pleader, wholly unsupported by allegations of facts, and are, therefore, manifestly impertinent and should be stricken out and dismissed from the amended bill.

Wherefore, these defendants, having fully answered the amended bill of complaint, pray that said bill be dismissed and that they be granted their costs in this behalf expended and for such other and further relief to which in the premises they may be justly and equitably entitled.

HOWARD SUTHERLAND,
Alien Property Custodian.
WALTER O. WOODS,
Treasurer of the United States.

LEO A. ROVER,
United States Attorney.
ROY ST. LEWIS,
Assistant Attorney General.
THOMAS E. RHODES,
Special Assistant to the Attorney General.
PHILIP M. MARCUM,
Special Attorney in Alien Property Matters.
MARION HENDERSON,
Special Counsel for the Alien Property Custodian.

47 DISTRICT OF COLUMBIA, *ss:*

Howard Sutherland, being first duly sworn, upon oath deposes and says that he is Alien Property Custodian of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; and that he verily believes that the matters and things therein stated are true.

HOWARD SUTHERLAND,
Alien Property Custodian.

Subscribed and sworn to before me this 19th day of September, 1932.

[NOTARIAL SEAL.] NELLIE G. PLUMLEY,
Notary Public, D.C.

My commission expires June 24, 1935.

DISTRICT OF COLUMBIA, *ss:*

Walter O. Woods, being first duly sworn, upon oath deposes and says that he is Treasurer of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; and that he verily believes that the matters and things therein stated are true.

WALTER O. WOODS,
Treasurer of the United States.

Subscribed and sworn to before me this 19th day of September, 1932.

[NOTARIAL SEAL.] ELLA P. VAN ZANDT,
Notary Public, D.C.

My commission expires Sept. 9, 1936.

Service of a copy of the foregoing answer acknowledged this 30th day of September, 1932, and we consent to the filing thereof.

RICHARD H. WILMER,
Attorney for the Plaintiff.

Let the foregoing answer to the amended bill of complaint be filed this 30th day of September, 1932.

JESSE C. ADKINS, *Justice.*

48 EXHIBIT "A"

TRUST No. 12009.—*Deutsche Gold und Silber Scheideanstalt vormals Roessler*

	Gross	Deduct	Net
The Columbia Trust Company, New York, in October 1918, received 3,968 shares of the Roessler and Hasslacher Chemical Company as depositary for the Alien Property Custodian under the above trust. This company also received 110 shares of Niagara Electro Chemical Company. Both certificates of stock were registered in the name of the said Columbia Trust Company and dividends were paid to the said depositary.			
On March 5, 1917, the Roessler and Hasslacher Chemical Company declared a 30% dividend. At that time 7,768 shares of stock in this company were enemy owned, and the proceeds of this dividend, less 2% tax paid at the source, amounting to $228,379.20, were retained by this company on account of war conditions. Subsequently said shares were sold and at the time of this company's report to the Alien Property Custodian in December 1917, but 3,968 shares were owned by persons at that time enemies.			
The dividend of March 5, 1917, was collected in installments by our depositary as follows:			
August 17, 1918, on account	$100,000.00		$100,000.00
October 30, 1918, on account	50,000.00		50,000.00
November 30, 1918, on account	28,379.20		28,379.20
December 28, 1918, balance on March 1917 divided	50,000.00		50,000.00
November 1, 1918, 40% dividend on 3,968 shares Roessler and Hasslacher Chemical Company	158,720.00	$1,200.00	157,520.00
November 25, 1919, 15% paid in cash and Liberty bonds:			
Cash received	31,170.00	1,200.00	29,970.00
Liberty bonds received	28,350.00		28,350.00
December 21, 1920, dividend paid in cash and Liberty bonds:			
Cash received	39,307.04	540.00	38,767.04
Liberty bonds received	51,956.96		51,956.96
September 8, 1922, $5.00 a share paid in cash	19,840.00	297.60	19,548.50
December 8, 1922, $5.00 a share paid in cash	19,840.00	908.40	18,931.60
December 1922, stock dividend of 150% paid and Alien Property Custodian received 5,952 new shares par $100	595,200.00		595,200.00
April 6, 1923, 1½% dividend paid on new total holdings of 9,920 shares	14,880.00		14,880.00
July 3, 1923, 1½% dividend paid in cash	14,880.00		14,880.00
October 2, 1923, 1½% dividend paid in cash	14,880.00	741.40	14,138.60
On the 110 shares of Niagara Electro Chemical Company held by the Columbia Trust Company as depositary dividends were received as follows:			
September 27, 1917, 200% dividend paid in cash less 2% tax	21,560.00		21,560.00
March 19, 1918, 300% dividend paid in cash	33,000.00		33,000.00
October 1, 1918, 100% dividend paid in cash	11,000.00		11,000.00
December 7, 1918, 100% dividend paid in cash	11,000.00		11,000.00
October 9, 1919, 300% dividend paid in cash	33,000.00	911.70	32,088.30
October 19, 1920, 300% dividend paid in cash and Liberty Bonds:			
Cash received	17,350.00	930.00	16,419.08
Insurance on bonds		.92	
Liberty bonds	15,650.00		15,650.00
September 7, 1922, 100% dividend paid in cash	11,000.00		11,000.00
December 8, 1922, 100% dividend paid in cash	11,000.00		11,000.00
November 1922, a stock dividend of 2,090 shares received on the Custodian's holding of 110 shares, par of new stock $100. Custodian's holding 2,200 shares. March 8, 1923, 5% dividend paid in cash on 2,200 shares	209,000.00		209,000.00
April 5, 1923, 2½% dividend on 2,200 shares paid in cash	11,000.00		11,000.00
July 3, 1923, 2½% dividend on 2,200 shares paid in cash	5,500.00		5,500.00
October 2, 1923, 2½% dividend on 2,200 shares paid in cash	5,500.00		5,500.00
	5,500.00		5,500.00
	1,618,463.29	6,694.02	1,611,769.18
If the new stock received on stock dividend is carried at $70.00, the price at which it was subsequently sold, the gross amount received as shown above is changed to $1,377,209.26. Using this last figure, the expense charged by our depositary in this matter amounts to 0.018%, and if the par value of the stock dividend were used, the percentage would be still smaller.			
Sale of stock:			
On November 27, 1923, 9,920 shares of Roessler and Hasslacher Chemical Company were sold for			694,400.00
On the same date 2,200 shares of Niagara Electro Chemical Company were sold for			154,400.00
The cash proceeds of these sales were on deposit in New York from the date of sale to February 28, 1924, and earned $5,390.70.			
Total proceeds of the two sales and interest			853,790.70

TRUST No. 12009.—*Deutsche Gold und Silber Scheideanstalt vormals Roessler*—Continued

	Gross	Deduct	Net
From the proceeds of sale the following expenses were paid:			
Federal and State transfer tax, Roessler and Hasslacher Chemical Company		$396.80	
Niagara Electro Chemical Company		88.00	
Depositary fee in both sales		200.00	
Depositary fee on collection of interest		146.31	
Advertising, preparing prospectus, printing, appraisal, auditing, auctioneer's fee, etc., as per itemized bills on file:			
Account of Niagara Electro Chemical Company		1,239.33	
Account of Perth Amboy Chemical Company		57.16	
Account of Roessler and Hasslacher Chemical Company		6,198.85	
Forward		$8,326.45	
50 Forwarded		$8,326.45	
S. H. and Lee J. Wolfe, auditing, Niagara			
Electro Chemical Company		782.75	
Roessler and Hasslacher Chemical Company		701.28	
Messrs. Crocker, Johnson, and Shores expense		549.51	
Frank L. Crocker, attorney's fee		2,526.22	
Messrs. Crocker, Johnson, and Shores, fee and expense		10,430.13	
Daniel O. Hastings, retainer		3,333.12	
Daniel O. Hastings, fee and expense		6,769.72	
Haskins and Sells, accounting		89.09	
Thomas W. Miller, expense to New York for conference		22.05	
Thomas W. Miller, expense to New York		27.40	
Total expenses		33,557.72	
These expenses of sale and attorneys' fees for a period of over 5 years amount to 0.0393% of the proceeds of sale. If the total income and the proceeds of sale are added, a gross value of $2,465,563.88 is arrived at.			
If the depositary expenses, the expenses of sale and the attorneys' fees are added, the total expenses of all kinds amount to $40,251.74, or 0.01227%.			

On March 28, 1924, approximately 6 years after seizure claim no. 19196 was allowed for $10,000, of which $9,900 was paid to the attorneys for the claimant and $100 was paid to the Alien Property Custodian, this being the first contribution from this trust to the administrative expense of the Alien Property Custodian.

KWG/

51 EXHIBIT "B"

TRUST No. 12055.—*Holzverkohlungs-Industrie Aktiengesellschaft*

	Gross	Deduct	Net
The Columbia Trust Company, New York, on April 13, 1918, received 1,940 shares Perth Amboy Chemical Company as depositary for the Alien Property Custodian under the above trust. Stock certificate was registered in the name of the depositary and dividends were paid to it.			
September 1918 dividend 30% paid in cash	$58,200.00		$58,200.00
October 7, 1919 40% dividend paid in cash	77,600.00	$1,200.00	76,400.00
October 20, 1920, 50% dividend in cash paid:	97,000.00	1,200.00 2.59	95,797.41
(Expressage on Liberty bonds shown below.)			
November 9, 1920, 25% dividend paid in Liberty bonds	48,500.00		48,500.00
December 8, 1922, 50% dividend paid in cash	97,000.00	1,200.00	95,800.00
December 19, 1922, 150% dividend paid in stock and depositary received 2,910 shares new stock $100 par, registered in its name, making total holding now 4,850 shares	291,000.00		291,000.00
April 4, 1923, 14% dividend paid in cash	67,900.00		67,900.00
July 3, 1923, 4% dividend paid in cash	19,400.00		19,400.00
August 18, 1923, 8% dividend paid in cash	38,800.00		38,800.00
October 3, 1923, 14% dividend paid in cash	67,900.00	1,200.00	66,700.00
Totals	$863,300.00	$4,802.59	$858,497.41

TRUST No. 12055.—*Holzverkohlungs-Industrie Aktiengesellschaft*—Continued

	Gross	Deduct	Net
The net amount received of $858,497.41 consists of $48,500 in Liberty bonds, $518,997.41 in cash and new stock of par value of $291,000. This stock was later sold for $70.00 a share, making its actual value $203,700.00, Using this figure in the net total, the depositary handled values aggregating $771,191.41 over a period of more than five years and six months for which it received $4.800, or 0.00622% of the total handled.			
On November 27, 1923, these 4,850 shares were sold for $70.00 a share or	$339, 500. 00		
The proceeds of sale were on deposit in New York at 2½% interest from the date of payment to the Custodian's representative to February 28, 1924, and interest was received amounting to	2, 157. 16		
Depositary's commission		$107. 86	
Net amount received			$2, 049. 30
Federal and New York State transfer taxes		194. 00	
Commission to depositary		200. 00	
Frank L. Crocker, attorney fee		1, 250. 00	
Messrs. Crocker, Johnson, and Shores, Alien Property Custodian's attorneys for this company from date of seizure to sale, almost five years, fee and expenses		5, 099. 44	
S. H. and Lee J. Wolfe, auditing		782. 76	
Frank Presbrey, newspaper advertising and printing booklets		779. 33	
Haskins and Sells, accounting		300. 00	
E. N. Jones, preparing prospectus		100. 00	
J. D. F. Schneider, bookkeeping		100. 00	
Total expenses of sale		$8, 805. 53	
52 Forward	$339, 500. 00	$8, 805. 53	
Net proceeds of sale			$330, 694. 47
Percent of expense of sale 0.026%			

The above includes every deduction made from the moneys in this trust for any expenses whatsoever up to the date of the allowance of Winslow claim for $10,000.00.

On May 15, 1924, claim 21573 was allowed to this claimant in the total sum of $10,000, of which amount $9,900 was paid to the claimant and $100 was retained by the Alien Property Custodian for administrative expense and represents the first payment of any sort to this office.

KWG ems.

53 EXHIBIT "C"

TRUST No. 12009.—*Deutsche Gold und Silber Scheideanstalt Vormals Roessler*

Herewith is submitted in some detail a record of services performed by employees of the Alien Property Custodian's Office insofar as said services had to do with Trust 12009 in the name of Deutsche Gold and Silber Scheideanstalt Vormals Roessler.

This record is not as complete as it would have been had the entries been made from day to day as the services were performed. If such a record had been kept, it would have been so involved and cumbersome that the end sought would have been defeated and an efficient administration sacrificed.

The record below is based on actual evidence of services as shown by various files in the Alien Property Custodian's Office and is respectfully submitted as an indication of actual performances with the suggestion that it understates the situation rather than otherwise.

December 5, 1917. Roessler & Hasslacher Chemical Co.'s report of enemy stockholders (APC Form 101) received. The report was jacketed and indexed as to enemies and reporter.

December 10, 1917. Report forwarded to the Bureau of Investigation of the Alien Property Custodian where it was combined with information in the files of the Bureau of Investigation relating to this particular enemy and assigned to an attorney who examined it as to compliance with the requirements of the Trading with the Enemy Act, notary's official affidavit and seal and sufficiency of evidence of enemy ownership.

Report received from the Bank of New York, 48 Wall Street, concerning property held to secure the Deutsche Gold und Silber Scheideanstalt Vormals Roessler in the fulfillment of a certain contract, dated January 7, 1914, with the New York Quinine Chemical Co., Ltd. Carded, indexed, and forwarded to the Bureau of Investigation.

December 18, 1917. Report received from the Niagara Electro Chemical Co. (APC Form 101) listing Deutsche Gold und Silber Scheideanstalt Vormals Roessler as the owner of 110 shares of stock in this corporation. Carded, indexed, and forwarded to the Bureau of Investigation.

January 22, 1918. Report entered on the report registery and given number 1314. Trust or account numbers were assigned to the various enemy stockholders of the Roessler & Hasslacher Chemical Co., and in particular Trust No. 12009 was assigned to the Deutsche Gold und Silber Scheideanstalt Vormals Roessler who, according to the report, were the owners of 3,968 shares of this company's stock. Trust No. 12009 was also assigned to report 1315. Following the assignment of the trust number to this report, it was forwarded to the Division of Corporations, where it was assigned to a referee who was instructed to consider the claim with a view to demand the assets reported.

Report of Niagara Electro Chemical Co. received from Bureau of Investigation. Entered on report registery and given no. 6883, Trust No. 12009, and assigned to an attorney for investigation.

March 3, 1918. Letter received from War Trade Board requesting copies of all reports made by the Roessler & Hasslacher Chemical Co., "together with any other information you may have regarding them."

March 21, 1918. Report of the Bank of New York returned
54 from Bureau of Investigation with a recommendation that it be cancelled as the property reported apparently belonged to an American corporation. This action was taken and the report cancelled on our records.

March 22, 1918. Investigations conducted concerning the property reported by the Roessler and Hasslacher Chemical Company under our Report Nos. 1314 and 1315, which having shown enemy assets held by the reporter, the referee in charge forwarded these reports to the demanding section with the request that the property reported be demanded. The Columbia Trust Company of New York was appointed the depositary and representative of the Custodian in this matter.

Before the demands were forwarded for service, however, the Custodian's office determined on further investigation and a telegram was sent requesting representatives of the Roessler and Hasslacher Chemical Company to appear in Washington, D.C., in the Custodian's

office on March 27th to hold conference regarding the enemy interest in this company.

March 23, 1918. The Roessler and Hasslacher Chemical Company agrees to have representatives present on March 27th. Same day letter was written to Roessler and Hasslacher Chemical Company acknowledging their telegram and confirming the conference of March 27th.

Letter also written to Mr. Richard Ely, Assistant Director War Trade Board, in answer to their letter referred to above, in which information concerning the Roessler and Hasslacher Chemical Company was supplied as requested.

March 25, 1918. Letter from the Roessler and Hasslacher Chemical Company in re telegram and further investigations.

March 27, 1918. Conference held with representatives of the Roessler and Hasslacher Chemical Company as scheduled and enemy interests determined, including certain stockholders in subsidiary companies, to wit, the Niagara Electro Chemical Company and the Perth Amboy Chemical Company.

March 28, 1918. Demands previously prepared on March 22nd, for all enemy interests in the Roessler and Hasslacher Chemical Company, Report No. 1314, including in particular 3,968 shares alleged to belong to Deutsche Gold und Silber Scheideanstalt Vormals Roessler, Trust No. 12009, forwarded to the Columbia Trust Company of New York, as our depositary, with a five-page letter of instructions concerning the service of the demands and the duties of the depositary.

April 1, 1918. Letter from Roessler and Hasslacher Chemical Company giving, as requested at the conference, names of the directors and officers in the Niagara Electro Chemical Company and the Perth Amboy Chemical Company. This letter also requested a copy of the proceedings of the conference held on March 27th. Answer prepared the same day and forwarded with copy of the conference notes as requested.

April 5, 1918. Letter received from Columbia Trust Company stating that the Custodian's demands had been served on the Roessler and Hacsslacher Chemical Company for the property reported under Report No. 1314, and that the original of said demands, with statement of service on the back thereof, was being forwarded under separate cover. Letter also received concerning the service of demands on the Roessler and Hasslacher Chemical Company for the property reported under Report No. 1315, demands being forwarded with notice of service under separate cover.

Two-page letter received from Roessler and Hasslacher Chemical Company in re the appointment of Alien Property Custodian directors on the Board of said Roessler and Hasslacher Chemical Company.

55 Letter received from Mr. E. J. Edwards, Chicago, Illinois, reporting that he was reliably informed that there were enemy interests in the Roessler and Hasslacher Chemical Company.

Letter received from the Central Purchasing Agency, New York, asking if it would be in order to continue business relations with the Roessler and Hasslacher Chemical Company. Answered same day,

advising that there was no reason why business with this firm should not be continued.

April 7, 1918. Letter received from Roessler and Hasslacher Chemical Company with reference to conference notes of March 27th, correcting the spelling of certain names and a revision of the distribution of 3,800 shares among the stockholders.

April 8, 1918. Letter from Roessler and Hasslacher Chemical Company in re conference acknowledged.

April 9, 1918. Letter from Price, Waterhouse and Company, enclosing an original and three copies of a "partial report" in re Roessler and Hasslacher Chemical Company. Same date Columbia Trust Company's letter in re serving of demands answered.

April 10, 1918. Letters written to Messrs. Lewis L. Clarke, George E. Warren, Robert Grier Monroe, Garrard Comly, Joseph A. Durkin, and W. H. Wells, asking each of them to serve as a director of the Roessler and Hasslacher Chemical Company, and reciting the fact that forty-eight percent of the capital stock in this company belonged to enemies and had been demanded by the Custodian. An outline of the general policy of this office was also enclosed and an answer was requested at an early date.

April 12, 1918. Letter received from Mr. George E. Warren agreeing to serve as a director.

April 13, 1918. Letter received from Mr. Robert Grier Monroe agreeing to serve as a director. Garrard Comly also writes accepting the directorship offered.

Mr. Dean Caldwell, of Washington, D.C., requests to make a survey of the Roessler and Hasslacher Chemical Company's property and submit a report of existing insurance and recommendation for any additional insurance that might seem necessary.

Letter of introduction prepared to the directors.

Letter received from Lewis L. Clarke, accepting position as a director, and also calling attention to the fact that a preliminary meeting of the directors had been called for April 15th. Letter further stated that as yet he had been unable to locate Mr. W. H. Wells, who was also named as a director.

April 15, 1918. Letter received from Mr. W. H. Wells accepting position as director. Wire sent to Mr. Lewis L. Clarke, giving Mr. Wells' address.

Letter received from Mr. James M. Gifford requesting conference in re Roessler and Hasslacher Chemical Company for Thursday morning at ten o'clock.

Receipt of "partial report" from Price, Waterhouse and Company acknowledged.

Acknowledgments of their letters of acceptance as directors sent to Messrs. Garrard Comly, Robert Grier Monroe, George E. Warren, W. H. Wells, and Lewis L. Clarke.

Letter received from Mr. E. J. Edwards, Chicago Illinois, on April 5th answered, in re Roessler and Hasslacher Chemical
56 Company. April 17, 1918. Conference with Mr. James M. Gifford, who brought a letter of introduction from the Columbia Trust Company signed by George E. Warren.

April 18, 1918. Mr. Warren's letter of introduction in re Mr. James M. Gifford answered with the statement that Mr. Palmer, Alien Property Custodian, intended appointing Mr. Robert Grier

Monroe as counsel for the company. Letters also sent to the other directors enclosing copies of the letter to Mr. Warren.

April 20, 1918. Letter received from Columbia Trust Company enclosing formal inventory of the property demanded for the account of Trust No. 12009.

April 21, 1918. Letter received from Mr. James Gifford enclosing clipping announcing the death of Mr. Joseph A. Durkin, one of the Alien Property Custodian directors, and suggesting the appointment of another person to take his place on the directorate.

April 23, 1918. Letter from Mr. George E. Warren discussing counsel for the company, Mr. Warren having recommended Mr. Gifford and Mr. Palmer having suggested Mr. Monroe. Mr. Warren accepts Mr. Monroe's appointment.

Letter from Mr. Clarke concerning counsel for the company.

April 24, 1918. Letter written to Mr. Warren and a copy sent to Mr. Monroe in re the appointment of Mr. Monroe as counsel for the Roessler and Hasslacher Chemical Company.

Letter written to Mr. Gifford by the chief of Corporation Management Division in which regret is expressed that Mr. Gifford had not been informed of Mr. Palmer's intention to name Mr. Monroe as counsel.

April 26, 1918. Letter received from the depositary asking if stock in the Roessler and Hasslacher Chemical Company should be immediately transferred in the name of the Columbia Trust Company as depositary.

April 27, 1918. Two-page letter received from Mr. James Gifford protesting the appointment by the Custodian of a counsel and also the appointment of six of twelve directors, pointing out that the company was an American corporation and the majority of the stock was owned by Americans. A copy of a letter to Mr. Warren was enclosed.

April 30, 1918. Letters written to all the Alien Property Custodian appointees on the board of Roessler and Hasslacher Chemical Company, enclosing a carbon copy of the letter addressed to the War Trade Board by the Roessler and Hasslacher Chemical Company under date of November 5th for information and guidance.

Letter also written to Mr. Gifford in re death of Mr. Joseph A. Durkin and stating that the Custodian will be asked to nominate someone in his place.

May 2, 1918. Letter written to Mr. Monroe suggesting the transfer of the enemy-owned stock in the Roessler and Hasslacher Chemical Company into the name of the Columbia Trust Company as depositary for the Alien Property Custodian. Letter to the same effect also written to Mr. Warren, vice president of the Columbia Trust Company.

May 3, 1918. Letter to Mr. Monroe enclosing letter of April 25th from Messrs. Dyrenforth, Lee, Chritton, and Wiles, and asking that it be submitted to the board of directors and this office advised.

Letter written to Mr. John H. Lee, Chicago, Illinois, stating that his letter had been submitted to the board of directors.

57 May 3, 1918. Mr. Chellis A. Austin selected as a director in place of the lately deceased Mr. Durkin. Letter written informing him of his appointment and giving instructions and names of other directors.

May 4, 1918. Letter from Mr. Warren acknowledging the receipt of the copy of the letter of Roessler and Hasslacher Chemical Company dated November 5th, in re the application of that company for a license to collect royalties on certain German patents.

May 6, 1918. Letter written to Mr. Edwin S. Schenck asking if he would accept a position as director of the Roessler and Hasslacher Chemical Company and outlining the enemy holdings and the Alien Property Custodian's policy with the company.

May 8, 1918. Letter received from the War Trade Board of Washington, D.C., submitting report on the enemy interests in Roessler and Hasslacher Chemical Co. with certain information as to the pay roll of its officers and directors and further report on the Mexican Roessler and Hasslacher Chemical Co.

Letter received from Mr. Warren reporting that 30 days' notice would have to be given to amend the bylaws to allow for 12 directors instead of six. That Mr. Comly and himself (Mr. Warren) had been elected to fill two vacancies on the Board as now constituted; as Mr. Comly had been subsequently called to Washington on war work and Mr. Schenck had been called to fill the vacancy.

Letter from Mr. Clarke also received in re request of War Trade Board for a license.

May 9, 1918. Letter received from Mr. Gifford as attorney for Roessler and Hasslacher Chemical Co., enclosing copies of a letter from the War Trade Board in which said Board refused to transmit to the enemy stockholders abroad a notice concerning the proposal to increase the directors from 6 to 12. Also a copy of a letter from Mr. Gifford to the War Trade Board outlining the necessity of this increase in directors.

Letter to Mr. Warren of the Columbia Trust Co. accepting his suggestions on communications concerning the Roessler and Hasslacher Chemical Co. Same to be sent through him as he is the only representative of the Alien Property Custodian now on the Board.

May 10, 1918. Letter from Mr. Warren stating that he had just learned that Mr. Chellis A. Austin had been named a director to fill the vacancy caused by the death of Mr. Durkin.

Letter from Mr. Edwin S. Schenck accepting position as director.

Letter received from Mr. Chellis A. Austin accepting position as director.

May 13, 1918. Letter received from Bureau of Investigation in New York of the Alien Property Custodian's Office, enclosing a communication from Military Intelligence suggesting a possible danger from the existence and operation of the Roessler and Hasslacher Chemical Company's warehouse adjacent to the Government's property at the Bush Terminal.

May 18, 1918. Letter from the Columbia Trust Co. in re accumulative dividends on Roessler and Hasslacher Chemical Company's stock held by this office.

Letters sent to Messrs. Clarke, Warren, Monroe, Wells, Austin, and Schenck enclosing a copy of the minutes of the noon-day conference of the directors of various bureaus of the Alien Property Custodian, requesting that some one officer of the company be designated to visa cablegrams and this office be supplied with the name of the officer whose name would be certified to the cable censor.

58 Letter to Mr. Monroe, acting as counsel for the Custodian, suggesting since the Alien Property Custodian had demanded all right, title, and interest of the enemy stockholders it was not necessary to submit notice of the proposal to increase the number of the directors from six to twelve to the former owners abroad, but that the notice could be served on the Custodian as representing these interests. Similar letter sent to Mr. Gifford.

May 20, 1918. Conference held with Mr. P. S. Rigney, of New York, who came down to Washington, D.C., for this purpose and presented a letter of introduction from Mr. Warren stating that Mr. Rigney had been elected Assistant Treasurer of the Roessler and Hasslacher Chemical Company and would countersign all checks, drafts, etc.

May 21, 1918. Letter received from Mr. Gifford urging the help of the Custodian in securing a license to communicate with the enemy stockholders in order that they might give proxies of a meeting on the increasing of directors.

Letter from Mr. Warren enclosing certified copies of the minutes of the April meeting of the Roessler and Hasslacher Chemical Company and three executive committee meetings held since April. This letter also called attention to the fact that the company was awaiting a decision as to the matter of communicating with the enemy stockholders in re the increased directorate. A new counsel was also suggested since Mr. Gifford had resigned and Mr. Monroe stated that he could not take the place.

May 23, 1918. Letter written to the Bureau of Enemy Trade of the War Trade Board, suggesting the issuance of a license for communicating with the enemy stockholders abroad to facilitate the reorganization of the company.

Letters to Alien Property Custodian directors, named but not yet elected, suggesting the detailed information as to values and conditions of the property of the Roessler and Hasslacher Chemical Company, Niagara Electro Chemical Company, and Perth Amboy Chemical Company be obtained at once for the information of this office to determine the value of the enemy interests in the companies should they be sold.

Three-page letter from Mr. Monroe discussing the legal aspects of the Custodian's right, under the Trading with the Enemy Act, to insist on increasing the directors and the provisions of the New York statutes requiring stockholders' meetings for the purpose of increasing the number of directors.

May 24, 1918. Letter to Mr. Warren acknowledging the receipt of the minutes and again discussing the matter of notice to enemy stockholders.

May 27, 1918. Letter to Mr. Monroe in which he was informed that Mr. Wells had been requested to apply for a license to permit the mailing of notice of stockholders' meetings to the enemy stockholders.

Three-page letter from Mr. Gifford again urging compliance with the statutes of the State of New York, in re stockholders' meetings and increasing the directors.

June 1, 1918. Letter received from K. G. Phillips Drug Company inquiring if it would be satisfactory to continue purchasing sodium cyanide from the Roessler and Hasslacher Chemical Company.

Letter from Mr. Warren enclosing copies of the minutes of two meetings of the persons named by the Alien Property Custodian to represent him on the Roessler and Hasslacher Chemical Company.

June 3, 1918. Letter from Columbia Trust Company, in re the service of demands on the Roessler and Hasslacher Chemical
59 Company and enclosing a letter from said Roessler and Hasslacher Chemical Company in which said company refused to turn over to the Columbia Trust Company, as depository for the Alien Property Custodian, certain stock belonging to the Deutsche Gold und Silber Scheideanstalt Vormals Roessler actually in the possession of this company. Roessler and Hasslacher Chemical Company claimed the stock was held for the company's protection against a debt of approximately one million dollars owed to it by the German concern.

Letter sent to Mr. Dean Caldwell in charge of the insurance survey of the Roessler and Hasslacher Chemical Company and allied corporations with enclosure of a list of the present insurance on the companies.

Letter received from the secretary of the American Drug Manufacturers Association inquiring as to the attitude the association should take towards the Roessler and Hasslacher Chemical Company in view of the fact that the Alien Property Custodian had taken over the enemy interests therein.

June 4, 1918. Letter sent to the secretary of the American Drug Manufacturers in which he was informed that there was no change in the situation except that the Alien Property Custodian was now a stockholder in the corporation. Letter to the same effect written to the K. G. Phillips Drug Company in Deadwood, South Dakota.

June 5, 1918. Letter from Columbia Trust Company enclosing certain stock powers to be signed, executed, and returned.

Letter to Mr. Warren acknowledging the minutes of the second meeting of the Alien Property Custodian representatives.

Letter to the Roessler and Hasslacher Chemical Company acknowleding their protest as lodged with the Columbia Trust Company against turning over stock. Blank notices of claim, form 111, were enclosed with instructions that claim be filed for any amount due from the Deutsche Gold und Silber Scheideanstalt and suggesting that stock be turned over as demanded.

Letter also written to the Columbia Trust Company insisting that the Roessler and Hasslacher Chemical Company be called on to deliver the property demanded.

June 7, 1918. Letter received from the Roessler and Hasslacher Chemical Company enclosing copies of the special meetings of the board of directors and a copy of the regular monthly meeting of directors for May 1918.

Letter from Dean Caldwell in re Roessler and Hasslacher Chemical Company's insurance.

Stock powers covering certain securities returned to the Columbia Trust Company.

June 8, 1918. Letter received from chief of military intelligence making report on the Mexican Roessler and Hasslacher Chemical Company.

June 11, 1918. Columbia Trust Company writes they are again seeking to have Roessler and Hasslacher Chemical Company's stock turned over to them.

June 12, 1918. Letter to military intelligence acknowledging report on Mexican Roessler and Hasslacher Chemical Company and outlining the situation concerning the Custodian's interest in the company.

June 18, 1918. Letter from Mr. Gifford pointing out that the question of delivery of the shares was a serious one from a legal standpoint and stating that he was investigating the matter. Also that the notices of claim blanks were being prepared and would be filed if there were no waiver of rights.

June 19, 1918. Letter from Mr. Gifford stating that the
60 company had delivered 2,078 capital stock of the Roessler and Hasslacher Chemical Company to the Columbia Trust Company, our depositary, under Trust No. 12009 in the name of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler. This letter also states that claim blanks were filed in duplicate for the lien Roessler and Hasslacher Chemical Company had on these shares.

Letter from the director of War Trade Board asking if the Alien Property Custodian had taken any action with reference to the interests of the Roessler and Hasslacher Chemical Company in the Chlorine Product Company, 81 Maiden Lane, New York.

June 20, 1918. Letter to Mr. Gifford acknowledging the letter in re delivery of 2,078 shares and requesting that the dividends on these shares also be paid.

June 24, 1918. Letter written to Mr. Wells asking him to advise what interest, if any, the Roessler and Hasslacher Chemical Company had in the Chlorine Product Company.

Letter to War Trade Board telling them that the Alien Property Custodian had taken over the enemy interest of forty-seven percent in the Roessler and Hasslacher Chemical Company, and would investigate the interest of said company in the Chlorine Product Company.

June 25, 1918. Stock powers received from Columbia Trust Company to be signed and returned.

Letter to Mr. Warren stating that this office had received a call from Mr. H. Owens, of the National Gauge Equipment Company, regarding an order which his company had placed with the Roessler and Hasslacher Chemical Company. Mr. Warren was instructed to say that the order of Mr. Owens would be expedited as it was for use in a Government contract.

June 26, 1918. Letter to Mr. Warren stating that this office had been notified of the election of Mr. Rigney as assistant treasurer, and that he had been authorized to countersign transfers of stock, checks, drafts, etc. Mr. Warren was requested to ask the directors to place every facility towards becoming familiar with the concern at Mr. Rigney's disposal.

June 27, 1918. Letter from Mr. Warren in re Mr. Owens' order and stated that the company would see that the order was taken care of at an early date.

June 29, 1918. Letter received from Mr. Owens stating that he had called on the Roessler and Hasslacher Chemical Company and that the situation was satisfactory.

Letter received from Bureau of Mines, Explosives Regulation Division, asking if Mr. Rigney represented the Custodian, as he had requested an explosives regulation license for the Roessler and Hasslacher Chemical Company. Answered that day, advising the Bureau of Mines that Mr. Rigney was the authorized representative of the Alien Property Custodian.

July 1, 1918. Stock powers covering certain securities executed and returned to Columbia Trust Co.

Letter from Mr. Warren acknowledging letter concerning Mr. Rigney and his duties as assistant treasurer of the Roessler and Hasslacher Chemical Company.

July 2, 1918. War Trade Board's letter states Speyer & Company have made application for license to transfer one hundred
61 shares of Roessler and Hasslacher Chemical Company from the Frankfurter Bank to Frank Roessler and asked what action this office wished to take.

July 5, 1918. Letter from Mr. Rigney outlining the trouble Roessler and Hasslacher Chemical Company had had in obtaining export licenses and suggesting that all bureaus of the War Trade Board be notified that the Roessler and Hasslacher Chemical Company was doing business under the auspices of the Alien Property Custodian.

Letter from Mr. Wells, in Birmingham, Alabama, stating that the request in re Chlorine Product Company had been forwarded to him and he would look it up on his return to Buffalo.

July 6, 1918. Letter from Mr. Gifford stating that if the Roessler and Hasslacher Chemical Company were called on to pay all back dividends at one time, it would work a great hardship and asking if an arrangement could not be made where the corporation might be permitted to retain or borrow the money for a reasonable time until it could make the payment without embarrassment.

Minutes of the monthly meeting of the board of directors received.

Letter from Mr. Gifford concerning the filling out of claim blanks for his client, Roessler and Hasslacher Chemical Company.

July 10, 1918. Letter from Mr. Wells giving the details of the capitalization of the Chlorine Product Company.

July 10, 1918. Letter to Mr. Gifford answering his request that the Roessler and Hasslacher Chemical Company not pay accumulative dividends at this time. He was informed that a subsequent letter would convey the decision of this office.

Letter to Mr. Warren, Alien Property Custodian representative, quoting letter from Mr. Gifford in re back dividends and asking Mr. Warren's suggestions and advice.

Letter to the Roessler and Hasslacher Chemical Company acknowledging the receipt of the minutes of the monthly meeting and stating that the company need not look to this office for any compensation for Mr. Wells.

July 15, 1918. Letter from Mr. Warren acknowledging communication regarding back dividends. Matter to be brought to the attention of the executive committee. Also state that Mr. Gifford had had a conference in New York with Mr. Francis P. Garvan, head of the Bureau of Investigation of the Alien Property Custodian, concerning this matter.

Letter to the War Trade Board informing them that the Roessler and Hasslacher Chemical Company, Perth Amboy Chemical Company, Niagara Electro Chemical Company, and the Mexican Roessler and Hasslacher Chemical Company were under the supervision of the Alien Property Custodian; that Mr. Rigney was the official representative of these companies and his request for export licenses should be considered.

Letter to War Trade Board giving them information concerning the Chlorine Product Company.

July 19, 1918. Letter from Mr. Warren enclosing copies of the minutes of the executive committee of the Roessler and Hasslacher Chemical Company. Another letter from Mr. Warren stating that the matter of payment of back dividends by the Roessler and
62 Hasslacher Chemical Company was brought up at the executive committee meeting and the company's auditor was requested to ascertain how quickly these dividends could be paid without embarrassing the company.

July 24, 1918. Letter from Mr. C. J. Root, Bristol, Connecticut, asking if it will be alright to pay a bill of sixty-five dollars which they owe to Roessler and Hasslacher Chemical Company.

Letter to Mr. Warren acknowledging minutes of the executive committee.

Letter to the War Trade Board suggesting that the application of Speyer & Company for license to transfer one hundred shares Roessler and Hasslacher be denied as the entire matter was being investigated.

July 25, 1918. Letter from Messrs. Piper, Carey, and Hall, Baltimore, Maryland, stating that a client had active business arrangements with Roessler and Hasslacher Chemical Company and asking for information as to any risk the client ran in continuing to do business with this company.

July 26, 1918. Letter to C. J. Root, stating that enemy stock had been taken over by the Alien Property Custodian and that it would be alright to pay the sixty-five dollar bill owed.

Letter to Messrs. Piper, Carey, and Hall informing them that there was no reason why their client should not continue business with Roessler and Hasslacher Chemical Company.

July 29, 1918. Letter from the United States Steel Products Company, New York, stating that they wanted to purchase some material from the Roessler and Hasslacher Chemical Company and asking the name of the Custodian's representative.

July 31, 1918. Letter to United States Steel Products Company giving the names of the Custodian's representatives on the board of Roessler and Hasslacher Chemical Company.

Letter from the Bureau of Mines stating that the explosives licenses issued to Mr. Rigney for the Roessler and Hasslacher Chemical Company had been held up and asking if the licenses should be issued to Mr. Rigney under the present conditions.

August 1, 1918. Letter to Bureau of Mines stating that under the circumstances it would be satisfactory to issue explosives licenses to Mr. Rigney for Roessler and Hasslacher Chemical Company.

August 9, 1918. Letter from the Franklin Manufacturing Company asking if this concern may still furnish carbonate of magnesia to the Roessler and Hasslacher Chemical Company on a contract made some time ago.

Letter from Mr. Warren enclosing a check for one hundred thousand dollars to be applied on the back dividends of the Roessler and Hasslacher Chemical Company due enemy stockholders and advising that in view of the wishes of this office not to embarrass the company, the executive committee had decided that the company might have until January 1st to pay the balance.

Letter from Gutta Percha and Rubber Company, Limited, of Toronto, asking if the Alien Property Custodian would still carry on the manufacturing of certain chemicals in the Roessler and Hasslacher Chemical Company to meet certain current contracts.

Letter to Mr. Joseph A. Choate stating that Mr. Palmer has
63 designated him as counsel for the Roessler and Hasslacher Chemical Company.

Letter from Mr. Garvan, head of the Bureau of Investigation, New York, to Alien Property Custodian asking that a letter, outlining the control exercised by the Alien Property Custodian over the Roessler and Hasslacher Chemical Company, be sent to the War Trade Board.

August 12, 1918. Letter to Franklin Manufacturing Company, stating that the Roessler and Hasslacher Chemical Company was an American corporation and that the enemy owned stock had been taken over by the Alien Property Custodian and that contracts with this company were on the same basis as with any other American corporation.

Letter to Mr. Warren acknowledging check for one hundred thousand dollars and stating that this office approved the arrangement to complete the payment of all back dividends by January 1st.

August 13, 1918. Letter to War Trade Board giving information relative to the amount of control exercised by the Alien Property Custodian in the Roessler and Hasslacher Chemical Company.

Letter to Mr. Garvan enclosing carbon copy of our letter to War Trade Board. A copy of this letter also forwarded to Mr. Rigney and request made that he notify Corporation Management Division of the Alien Property Custodian that he has been specifically authorized to visa cablegrams to and from the company.

August 14, 1918. Letter from Bijur Motor Lighting Company in re a credit item of $35.84 in favor of the Roessler and Hasslacher Chemical Company and asking for a list of enemy firms.

Minutes received of regular monthly meeting of the board of directors from Roessler and Hasslacher Chemical Company.

Letter to Mr. Choate requesting balance sheets of Roessler and Hasslacher Chemical Company, Perth Amboy Chemical Company, and Niagara Electro Chemical Company showing deposits, loans, and accounts due from enemies; merchandise, or advances thereon, located within enemy lines; merchandise, or advances thereon, located in neutral countries, but embargoed from shipment; mortgages, loans, and accounts due enemies.

August 15, 1918. Letter to Roessler and Hasslacher Chemical Company acknowledging receipt of the minutes of the meeting of board of directors.

Letter from Columbia Trust Company enclosing two statements in re accumulative dividends due on Roessler and Hasslacher Chemical Company stock.

Letter from Mr. Rigney authenticating his power to visa cablegrams.

August 16, 1918. Letter from the Reliance, Textile and Dye Works Company asking if it would be in order to continue business with the Roessler and Hasslacher Chemical Company.

August 19, 1918. Minutes of the executive committee received from Mr. Warren.

Letter from Mr. Warren enclosing statement of the accumulated dividends on stock of Niagara Electro Chemical Company and Perth Amboy Chemical Company.

Letter from Roessler and Hasslacher Chemical Company asking for instructions in re payment of future premiums on life insurance policy.

August 20, 1918. Letter from the Coca Cola Company
64 asking if they should continue business with Roessler and Hasslacher Chemical Company.

Letter to Bijur Motor Lighting Company stating that it was in order to pay $35.84 due Roessler and Hasslacher Chemical Company.

August 21, 1918. Letter to Gutta Percha and Rubber Company stating they could continue business dealings direct with Roessler and Hasslacher Chemical Company as formerly.

Letter to Reliance Textile and Dye Works Company informing them there was no legal obstacle in making contracts with Roessler and Hasslacher Chemical Company.

August 22, 1918. Letter to Mr. Warren acknowledging the minutes of the executive committee meeting.

August 23, 1918. Letter to Coca Cola Company stating there was no reason why business should not be continued with Roessler and Hasslacher Chemical Company.

August 26, 1918. Letter from Mr. Warren enclosing minutes of the regular monthly meeting of the board of directors of Roessler and Hasslacher Chemical Company.

August 28, 1918. Letter to Mr. Warren acknowledging minutes of the regular monthly meeting of the board of directors of Roessler and Hasslacher Chemical Company.

Letter from Mr. Warren requesting instructions concerning the sale of eighty shares of Sodium Process Company held by Roessler and Hasslacher Chemical Company for Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

August 29, 1918. Letter from United States Steel Products Company inquiring if it would be satisfactory to place a small order with Roessler and Hasslacher Chemical Company. Letter answered same date, advising that there was no reason why lawful business should not be continued with Roessler and Hasslacher Chemical Company.

August 29, 1918. Letter to Mr. Warren in re the sale of eighty shares of Sodium Process Company. He was informed that a subsequent letter would convey the decision of this office.

September 2, 1918. Letter from Lawler and Mulally stating The J. Watkins Medical Company had purchased sal ammonia from Roessler and Hasslacher Chemical Company and inquiring if they should make payment to said Roessler and Hasslacher Chemical Company.

September 4, 1918. Letter to Columbia Trust Company instructing them to have Roessler and Hasslacher Chemical Company turn over certificates of stock for eighty shares of Sodium Process Company to said Columbia Trust Company, as our depositary, to be transferred into their name and inventory of same sent to this office.

Letter received from General Electric Company, Schenectady, N.Y., inquiring if they could continue business relations with Roessler and Hasslacher Chemical Company, Niagara Electro Chemical Company, Perth Amboy Chemical Company.

Minutes of two meetings of the executive committee of Roessler and Hasslacher Chemical Company received.

Letter to Lawler and Mulally stating that payment for the purchase of sal ammonia should be made direct to Roessler and Hasslacher Chemical Company.

65 September 5, 1918. Letter to General Electric Company, Schenectady, N.Y., informing them they were free to trade with the corporations listed in their letter of August 30th.

Letter to Mr. Warren acknowledging minutes of two meetings of the executive committee.

Letter from Roessler and Hasslacher Chemical Company enclosing copy of announcement issued August 15th and copy of their price list.

September 11, 1918. Letter from Mr. J. H. Choate, Jr., accepting to act as counsel for Roessler and Hasslacher Chemical Company.

September 12, 1918. Letter to Mr. J. H. Choate, Jr., in re increasing board of directors from six to twelve.

September 14, 1918. Minutes of regular monthly meeting of Roessler and Hasslacher Chemical Company received.

September 18, 1918. Letter to Mr. Warren acknowledging minutes of regular monthly meeting of Roessler and Hasslacher Chemical Company.

Report filed by E. I. du Pont de Nemours Company, Wilmington, reporting concerning Federal Trade License No. 19 in re Patent No. 680395 belonging to said Deutsche Gold und Silber Scheideanstalt Vormals Roessler concerning Indigo and its Derivatives, referred to Bureau of Investigation.

September 20, 1918. Letter from Mr. Choate, Jr., informing us of Roessler and Hasslacher Chemical Company's unwillingness to increase the members of its board, and stating he had not insisted on same as two of the Alien Property Custodian directors were members of the executive committee.

September 27, 1918. Letter from Roessler and Hasslacher Chemical Company enclosing balance sheet affecting enemy accounts. A copy of the balance sheet of Perth Amboy Chemical Company also enclosed.

Report filed by E. I. du Pont de Nemours returned from the Bureau of Investigation with recommendation that trust number be assigned.

October 2, 1918. Minutes received of two meetings of the executive committee of Roessler and Hasslacher Chemical Company.

Letter to Roessler and Hasslacher Chemical Company acknowledging receipt of balance sheets.

October 4, 1918. Letter to Mr. Warren acknowledging minutes of two meetings of the executive committee of Roessler and Hasslacher Chemical Company.

Letter from Mr. Warren enclosing minutes of the directors' meetings of Niagara Electro Chemical Company and Perth Amboy Chemical Company.

October 7, 1918. Minutes received of the meeting of the board of directors of Roessler and Hasslacher Chemical Company.

October 8, 1918. Letter to Mr. Warren acknowledging minutes of the directors' meetings of Niagara Electro Chemical Company and Perth Amboy Chemical Company and again inquiring as to the increased directorate.

Letter to Mr. Warren acknowledging minutes of the meeting of the board of directors of Roessler and Hasslacher Chemical Company.

October 9, 1918. Letter from Columbia Trust Company advising us of an investigation in re the transfer of certain stock of Roessler and Hasslacher Chemical Company prior to our entry into the war and stating that the enlargement of the board of directors of Niagara Electro Chemical Company and Perth Amboy Chemical Com-
66 pany would be held up pending the result of this investigation.

October 11, 1918. Report filed by E. I. du Pont de Nemours entered on report registry and given Report No. 28708, Trust No. 12009, and forwarded to corporation management division.

October 12, 1918. Letter received from Mr. Lohmeyer inquiring concerning the status of Roessler and Hasslacher Chemical Company.

October 16, 1918. Letter to Mr. Lohmeyer informing him that Roessler and Hasslacher Chemical Company was an American corporation and the enemy-owned stock had been taken over by the Alien Property Custodian.

October 18, 1918. Letter to Mr. Joseph F. Guffey, director of bureau of sales, New York, instructing that the enemy-owned stock in Roessler and Hasslacher Chemical Company and its subsidiary companies, to wit, Niagara Electro Chemical Company and Perth Amboy Chemical Company, should be sold as soon as Mr. Choate comes to a conclusion as to whether or not the stock in dispute can be obtained.

October 19, 1918. Letter from James H. Rhodes and Company inquiring what action is to be taken in re enemy-owned stock of the Roessler and Hasslacher Chemical Company.

October 21, 1918. Letter to James H. Rhodes and Company stating the Alien Property Custodian holds forty-nine percent of Roessler and Hasslacher Chemical Company capital stock; that there is still some dispute as to whether or not additional stock is enemy held and should be taken over by the Alien Property Custodian. As soon as this is determined the enemy interest in Roessler and Hasslacher Chemical Company will be publicly auctioned.

October 25, 1918. Letter from Messrs. Leckie, Cox, and Sherier inquiring concerning the status of the Roessler and Hasslacher Chemical Company.

October 30, 1918. Letter to Messrs. Leckie, Cox, and Sherier informing them that about forty-eight percent of the stock of Roessler and Hasslacher Chemical Company has been taken over by the Alien Property Custodian who has two representatives on the board of directors.

October 30, 1918. Letter to Mr. Wells requesting his report of the investigations of the property of Roessler and Hasslacher Chemical Company and its subsidiaries.

October 30, 1918. Letter from Columbia Trust Company enclosing minutes of the executive committee meeting of Roessler and Hasslacher Chemical Company. Also a copy of report made by Mr. Rigney, in re examination of the buildings and plant of the Perth Amboy Company and stating Mr. Rigney had completed the details as to all items covered by insurance.

October 31, 1918. Letter to Columbia Trust Company acknowledging minutes of the executive committee meeting of Roessler and Hasslacher Chemical Company and also Mr. Rigney's report.

November 2, 1918. Letter from Mr. Warren requesting copies of the Price, Waterhouse and Company's report made on Roessler and Hasslacher Chemical Company and its subsidiaries.

November 2, 1918. Letter to Mr. Warren stating the copies requested of Price, Waterhouse and Company's report would be forwarded by the bureau of audits.

67 November 8, 1918. Minutes of the meetings of the executive committee of Roessler and Hasslacher Chemical Company received from Columbia Trust Company.

November 8, 1918. Letter to Mr. Warren enclosing copy of the report of Price, Waterhouse and Company, and advising that the same is looked upon as a preliminary report; that Roessler and Hasslacher Chemical Company and its subsidiaries have been under investigations by Mr. Choate, who has had frequent conferences with the accountants and the officers of the corporation and as soon as these investigations are completed, a final accounting will be made.

November 9, 1918. Letter to Columbia Trust Company acknowledging minutes of the meetings of the executive committee of Roessler and Hasslacher Chemical Company.

November 12, 1918. Extensive thirty-nine-page typewritten report received from Mr. Choate who on August 9th was appointed counsel for this company. This report was accompanied by a letter of the same date from Mr. Garvan, Director of the Bureau of Investigation. The details of the reorganization and enemy stockholders of the Roessler and Hasslacher Chemical Company and its subsidiary companies were gone into and also details of the transfer of some thousands of shares. This transfer was made in February of 1917, just prior to the declaration of war by the United States. This statement was given a formal Report Number 31764 and Trust 12009 assigned.

November 19, 1918. Minutes of the monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

November 19, 1918. Demands prepared on Mr. Choate's report under which the Custodian demanded, through the Columbia Trust Company, as depositary, the Roessler and Hasslacher Chemical

Company stock in the names of some seventeen individuals, alleging it belonged to the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

November 21, 1918. Letter to Mr. Warren acknowledging minutes of the monthly meeting of the board of directors of Roessler and Hasslacher Chemical Company.

December 3, 1918. Minutes of the executive committee meetings of the Roessler and Hasslacher Chemical Company received.

December 6, 1918. Letter to Mr. Warren acknowledging minutes of the executive committee meetings of the Roessler and Hasslacher Chemical Company.

December 13, 1918. Letter from Columbia Trust Company enclosing affidavit of Mr. Macalister showing the demands were properly served on the Roessler and Hasslacher Chemical Company who refused to accept service and asking for instructions.

Minutes of the regular monthly meeting of Roessler and Hasslacher Chemical Company received.

December 19, 1918. Letter to Mr. Warren acknowledging minutes of the regular monthly meeting of Roessler and Hassacher Chemical Company.

Three-page letter received from Mr. Warren telling of efforts, through several weeks past, to work up the sale of enemy interests in Roessler and Hasslacher Chemical Company and allied concerns.

Following numerous conferences with banking concerns he
68 stated that several prospective syndicates which he had solicited to bid on the stock had decided not to make an offer. Mr. Warren requests interview early in January with the Custodian's office to discuss this matter.

December 23, 1918. Letter from Mr. Gifford, attorney for Roessler and Hasslacher Chemical Company, concerning demands made on owners of Roessler and Hasslacher Chemical Company stock who purchased same early in 1917. This letter explained that the sale was bona fide and that it was done to remove German interest from the company; that the purchasers were all Americans and suggested a disinterested investigation and possibly a five-year voting trust.

Letter to Mr. Warren stating a conference would be held in New York on January 3rd as requested.

January 2, 1919. Minutes of three executive committee meetings of the Roessler and Hasslacher Chemical Company received.

Letter from Mr. Warren agreeing to date of conference.

January 4, 1919. Minutes of executive committee meetings of the Roessler and Hasslacher Chemical Company acknowledged.

January 7, 1919. Letter to Columbia Trust Company acknowledging affidavit of Mr. Macalister.

January 9, 1919. Letter from Mr. Warren enclosing a letter he received from Mr. Rigney which refers to the difficulties in obtaining certain licenses from the War Trade Board and asking this office to assist in straightening these matters out. Mr. Warren also asks for a decision as to the sale of the Roessler and Hasslacher Chemical Company and again raising the question of setting aside the sale of certain shares in 1917.

January 10, 1919. Minutes of the directors' meeting of the Roessler and Hasslacher Chemical Company received.

January 14, 1919. Letter to Mr. Warren advising that the matter of licenses is being taken up with the War Trade Board.

Letter to War Trade Board requesting an interview to discuss the matter of granting licenses.

January 15, 1919. Letter to Mr. Warren acknowledging minutes of the directors' meeting of Roessler and Hasslacher Chemical Company.

January 15, 1919. Copy of letter from War Trade Board stating that the demand served on the Roessler and Hasslacher Chemical Company for additional stock has been refused and that after several conferences with Mr. Choate he emphatically approves our course in refusing licenses under existing conditions.

January 16, 1918. Telegram from Mr. Garvan to Mr. Whittaker stating the approval of this office to the War Trade Board's action in refusing licenses to Roessler and Hasslacher Chemical Company and requesting that no action be taken in this matter without further instructions from Mr. Garvan.

January 25, 1919. Letter to Mr. Choate stating that the patent and trade-mark situation should be investigated and asking for copies of the instruments executed by Mr. Seitz while he was in Germany in February of 1917, and also copies of charters and by-laws of Roessler and Hasslacher Chemical Company and its subsidaries.

69 February 3, 1919. Minutes of special meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

The above-mentioned minutes acknowledged.

Mr. Choate advises this office that he will make an investigation into the patent situation as soon as Mr. Hoguet returns from Washington.

February 5, 1919. Roessler and Hasslacher Chemical Company informed that a supplemental demand has been issued by the Alien Property Custodian requiring the cancellation of stock held by them for persons determined to be enemies and outlining the procedure this office wished them to take in this matter.

Supplemental stock demand forms forwarded to Mr. Warren with the request that same be served on the Roessler and Hasslacher Chemical Company. Mr. Warren is given further instructions in re the cancellation of stock.

February 8, 1919. Minutes of regular monthly meeting of board of directors of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

February 12, 1919. The supplemental stock demand on cancellation form served on and accepted by Roessler and Hasslacher Chemical Company returned to this office by Mr. Warren.

February 13, 1919. Supplemental stock demand acknowledged.

February 26, 1919. Letter from Mr. Gifford setting out corrections to be made as to names and addresses of enemies as shown on our previous demands.

Following an investigation of several weeks into the records of the United States Patent Office, Mr. Will T. Gordon, an attorney employed by the Alien Property Custodian, reported that Patent Nos. 903588 and 963377 were owned by the Deutsche Gold und Silber

Scheideanstalt Vormals Roessler. This report was prepared in the office of the Alien Property Custodian and sworn to before the Custodian's notary. It was entered, indexed, and given Report No. 36816 and Trust 12009 assigned.

A demand for the transfer of all the beneficial interest in both these patents were served on the Commissioner of Patents and on the Roessler and Hasslacher Chemical Company.

March 1, 1919. A complete and corrected copy of the Roessler and Hasslacher Chemical Company's memorandum forwarded to the Alien Property Custodian by Mr. Choate.

March 5, 1919. The above-mentioned memorandum acknowledged.

March 6, 1919. Minutes of three meetings of the executive committee of the Roessler and Hasslacher Chemical Company received.

March 7, 1919. Minutes referred to above acknowledged.

March 12, 1919. Minutes of two meetings of the board of directors of the Roessler and Hasslacher Chemical Company received.

March 12, 1919. Acknowledgment made of the minutes mentioned above.

March 17, 1919. Continuing his investigation into the United States Patent Office, Mr. Gordon reported under this date that Patent No. 680395 was owned by the Deutsche Gold und Silber Scheideanstalt, Vormals Roessler, subject to certain rights of E. I. du Pont de Nemours and Company of Wilmington, Delaware. This report was entered, indexed, and given Report Number 38127 and Trust 12009 assigned.

70 March 22, 1919. Demand for Patent No. 680395 served on the Commissioner of Patents and forwarded, respectively, to Wilmington and New York for service on E. I. du Pont de Nemours and Company and Roessler and Hasslacher Chemical Company.

Commissioner of Patents admits service on the Custodian's demand issued under Report 36816.

March 25, 1919. Mr. Choate is again requested to forward to the Alien Property Custodian's office copies of articles of incorporation and bylaws of the Roessler and Hasslacher Chemical Company and to investigate the status of certain shares that were ordered to be transferred to the Bank of the Manhattan Company as depositary.

March 26, 1919. Commissioner of Patents admits service on Custodian's demand under Report 38127.

March 28, 1919. Copy of a complaint filed by the Mexican Roessler and Hasslacher Chemical Company with the War Trade Board forwarded to this office in re loss of cyanide business.

April 3, 1919. Minutes of a meeting of the executive committee of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

Above-mentioned minutes acknowledged.

April 4, 1919. Minutes of regular monthly meeting of board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

Additional investigations into the records of the United States Patent Office by Mr. Gordon resulted in Trade-marks No. 35667 and 14100 being reported as the property of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler. This report was given no. 38990 and Trust 12009 assigned. Same was entered and indexed. Demand

prepared the same date for service on the Commissioner of Patents and the Roessler and Hasslacher Chemical Company.

April 7, 1919. Minutes of regular monthly meeting referred to above acknowledged.

Mr. Gifford writes Mr. Garvan informing him that the Roessler and Hasslacher Chemical Company will deliver, under protest, certain shares of Niagara Electro Chemical Company and Perth Amboy Chemical Company in conformity with the demand issued by the Alien Property Custodian, and that suits will be instituted as provided under section 9 for the purpose of establishing the rights and titles of various parties as owner of said stock. Also a lengthy discussion of Mr. Gifford's views of section 9 is submitted.

April 10, 1919. Mr. Gifford acknowledges the service of demands on some seven different parties named for stock in the Roessler and Hasslacher Chemical Company. Letter stated that the property demanded would be delivered, but under protest, and request sufficient supply of claim blanks to file the necessary claim for the return of the property.

April 10, 1919. Mr. Gifford again writes concerning demands for Roessler and Hasslacher Chemical Company owned by various persons residing in Boston, Cincinnati, Chicago, Philadelphia, etc., and advises that the demands had not been served personally on these men. Mr. Gifford asks that compliance with the demands he deferred pending the outcome of certain suits to test such cases, provided his action would not be construed as resisting the demands of the Alien Property Custodian.

The patents reported under Reports 38127 and 36816 and the trade marks reported under Report 38990 were on this date transferred to the Chemical Foundation and the assignment duly recorded in the United States Patent Office. Records of the
71 Alien Property Custodian in connection with these reports and this trust were all changed to show this assignment.

April 11, 1919. Certified copies of the certificate of incorporation and bylaws of the Roessler and Hasslacher Chemical Company received from Mr. Choate.

April 14, 1919. Receipt of the above documents acknowledged.

April 24, 1919. Letter from Columbia Trust Company enclosing thirty-six formal inventories covering certificates received from Roessler and Hasslacher Chemical Company. Letter further states that the balance of these certificates cannot be delivered at present as there seems to be some discrepancy between the list of stockholders given on the demand and the actual owners on the transfer books. As soon as this matter can be adjusted the inventories covering the balance of these certificates will be forwarded to the Alien Property Custodian.

April 30, 1919. Demand served on Roessler and Hasslacher Chemical Company for all interest in Trade Marks 14100 and 35667.

May 1, 1919. Letter received from the Roessler and Hasslacher Chemical Company admitting service on the demand just mentioned, but stating that the Chemical Foundation, as such, had no interest whatsoever in the trade marks and did not represent the Deutsche Gold und Silber Scheideanstalt Vormals Roessler in connection with them in any matter.

May 3, 1919. Acknowledgment to the Columbia Trust Company of the receipt of the above-mentioned thirty-six inventories.

May 7, 1919. Minutes of meetings of the executive committee of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

The minutes referred to above acknowledged.

Pursuant to the amendment of November 4, 1918, to the Trading with the Enemy Act, demand was issued and served on the Roessler and Hasslacher Chemical Company requiring the cancellation of outstanding certificates of stock and the issuance of new certificates in the name of the depositary designated by the Alien Property Custodian. The corporation was also instructed, following the issuance of these certificates, to notify the Custodian's office as to the details of each certificate, serial number, date, number, and class of stock, etc.

Mr. Crocker, associate counsel for the Roessler and Hasslacher Chemical Company, forwards to the Alien Property Custodian's office copies of the order of sale and asks that it be entered on our records and the date of sale fixed. He also asks that the Washington office check the figures as to the number of shares to be sold.

May 9, 1919. Letter from Columbia Trust Company listing certain shares of Roessler and Hasslacher Chemical Company and owners thereof, which shares were delivered under protest and covered by various demands issued by the alien Property Custodian. Instructions are requested as to the disposition of this stock.

May 10, 1919. Minutes of the regular monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

Supplementary stock demands forwarded to Mr. Choate with the request that same be served on the Roessler and Hasslacher Chemical Company and outlining the procedure the Alien Property Custodian wished to be taken in this manner.

May 12, 1919. Minutes of the above-mentioned monthly meeting acknowledged.

May 13, 1919. Supplementary demands forwarded to Mr. Crocker to be served on Roessler and Hasslacher Chemical Company.

72 May 14, 1919. Mr. Brown, of Perth Amboy, N.J., writes asking a series of some nine or ten questions concerning the enemy ownership, directors, and Alien Property Custodian control of the Roessler and Hasslacher Chemical Company.

Letter to Columbia Trust Company requesting the status of some eight certificates listed therein.

May 15, 1919. Mr. Crocker writes, under this date, that the demands have been served on the Roessler and Hasslacher Chemical Company.

May 17, 1919. The Columbia Trust Company's letter of this date lists some eight certificates still outstanding and states that Mr. Gifford has informed them that the Alien Property Custodian would not insist on the delivery of these shares pending the outcome of certain suits to test such cases.

May 20, 1919. Demands served on the Roessler and Hasslacher Chemical accepted and returned to the Alien Property Custodian's Office by Mr. Crocker.

May 21, 1919. Columbia Trust Company is advised that the situation regarding the undelivered certificates will be discussed with Mr. Gifford.

Mr. Gifford, under date of May 21st, is informed by the Alien Property Custodian's Office that the shares in question were to be deposited with the Columbia Trust Company, depositary for the Alien Property Custodian.

May 22, 1919. Demands forwarded to this office by Mr. Crocker acknowledged.

Columbia Trust Company requests instructions in re formal inventories covering certificates of stock and the transfer of same.

May 26, 1919. The Alien Property Custodian's Office requests the Columbia Trust Company to submit inventories covering shares and certificates of Roessler and Hasslacher Chemical Company stock deposited with them. Letter further states the attorney for said Roessler and Hasslacher Chemical Company has been informed that these certificates should be transferred.

Copy of order of sale forwarded to Mr. Anglim with the request to fill in all blanks before sending same to the printer, and to make no alterations without first conferring with the Alien Property Custodian.

Letter received from Mr. Gifford referring to various discussions held with Mr. Garvan and other representatives of the Alien Property Custodian concerning the two-hundred-odd shares of stock owned in small lots by persons living in the United States. Mr. Gifford opposed the Custodian's demand for the issuance of new certificates in the name of the Custodian, but was willing to deposit the stock.

May 27, 1919. Mr. Crocker informed the order of sale had been duly executed and forwarded to the New York office.

May 29, 1919. Order of sale acknowledged by Mr. Baker, of the New York office.

June 2, 1919. Mr. Samuel B. Hill inquires regarding the present status of Roessler and Hasslacher Chemical Company and asking advice in re claim for damages against said Roessler and Hasslacher Chemical Company.

Mr. Hill's letter acknowledged and giving the information desired.

Mr. Gifford requested to forward demand covering twenty-five shares of Roessler and Hasslacher Chemical Company to the office of the Alien Property Custodian.

Mr. Crocker acknowledges receipt of order of sale and states it will be in the hands of the printer in a day or two.

June 4, 1919. Minutes of three meetings of the executive
73 committee of the Roessler and Hasslacher Chemical Company.

Letter from Mr. Gifford stating the demand covering twenty-five shares of Roessler and Hasslacher Chemical Company was delivered to Mr. Crocker.

Receipt is acknowledged of the minutes of the above-mentioned executive meeting.

Alien Property Custodian's office writes Mr. Crocker requesting that he forward the demand in question.

June 7, 1919. Mr. Warren forwards minutes of the regular monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company.

Formal inventories covering certificates received from Roessler and Hasslacher Chemical Company forwarded to the Alien Property Custodian by the Columbia Trust Company.

Minutes of the above-mentioned monthly meeting acknowledged.

June 10, 1919. Mr. Guffey is advised that the order of sale in the Roessler and Hasslacher Chemical Company has been amended and is requested to make the necessary change.

June 13, 1919. Mr. Baker writes that the suggested change in the order of sale has been made.

June 14, 1919. Demand covering twenty-five shares of stock in Roessler and Hasslacher Chemical Company forwarded by Mr. Crocker.

June 16, 1919. Above-mentioned demand acknowledged.

June 17, 1919. Patent section of the Alien Property Custodian writes the Chemical Foundation informing them that Roessler and Hasslacher Chemical Company had no interest in Trade Marks 14100 and 35667.

June 23, 1919. Copy of report and audit for the four months' period ending April 30, 1919, of the Roessler and Hasslacher Chemical Company forwarded by L. H. Conant & Co.

June 26, 1919. Acknowledgment made to Mr. Guffey of his letter of June 25th in which he advised that the sale of enemy owned interest in the Roessler and Hasslacher Chemical Company and its subsidiaries had been postponed to July 10th.

Minutes of the executive committee meetings of Roessler and Hasslacher Chemical Company received from Mr. Warren.

June 27, 1919. Minutes referred to above acknowledged.

July 5, 1919. Mr. Warren forwards minutes of the last meeting of the board of directors of the Roessler and Hasslacher Chemical Company.

July 7, 1919. Above minutes acknowledged.

July 5, 1919. Telegram to Roessler and Hasslacher Chemical Company requesting the amount of fees paid Messrs. Warren and Schenck as directors, the number of meetings held, and the amount of fees paid per meeting since April 23, 1918.

July 7, 1919. Roessler and Hasslacher Chemical Company wires information requested in our telegram of July 5th.

Letter from Roessler and Hasslacher Chemical Company confirming their telegram of July 7th.

July 11, 1919. Above-mentioned letter acknowledged.

74 July 15, 1919. Letter from Columbia Trust Company listing certificate numbers and number of shares received in exchange for a like number of shares of capital stock of Roessler and Hasslacher Chemical Company and registered in the name of Francis P. Garvan, as Alien Property Custodian.

July 16, 1919. Messers. Emery, Varney, Blair & Hoguet transmit informal reports and demands in connection with the sale of the enemy-owned interest in Roessler and Hasslacher Chemical Company.

Mr. John W. Thompson, following an investigation, reported that Roessler and Hasslacher Chemical Company had certain pre-war contracts and agreements with the Deutsche Gold und Silber Scheideanstalt Vormals Roessler on which royalties were being paid. These royalties concern Patents 708079, 711910, and 716350. This report was entered, indexed, and no. 42162 assigned and also Trust 12009.

July 17, 1919. American Cyanamid Company's letter and Alien Property Custodian's reply to same forwarded to Mr. Guffey.

July 18, 1919. Patent demands forwarded to Commissioner of Patents requesting that same be accepted and recorded in the Assignment Division of the Patent Office.

Mr. Guffey advises Mr. Garvan that the sale of common capital stock of Roessler and Hasslacher Chemical Company was held in the New York office of the Alien Property Custodian on July 18, 1919. A copy of the prospectus in this case was enclosed.

July 22, 1919. Demand served on Commissioner of Patents accepted by him.

July 23, 1919. Bill of S. H. & Lee J. Wolfe, consulting actuaries, forwarded to Mr. Guffey with the suggestion that same be paid from the proceeds of sale of Roessler and Hasslacher Chemical Company stock.

July 30, 1919. Alien Property Custodian Bureau of Investigation forwarded to Mr. Crocker, in New York, certain reports on Roessler and Hasslacher Chemical Company and its allied concerns, Perth Amboy Chemical Company and Niagara Electro Chemical Company. The information in these reports was compiled from the files of the Alien Property Custodian, Department of Justice, State Department, Military Intelligence, and War Trade Intelligence.

August 4, 1919. Letter received from Messers. Emery, Varney, Blair, and Hoguet enclosing demands in the matter of the pre-war contracts referred to above. These had been served and acknowledgment of the service noted thereon by Roessler and Hasslacher Chemical Company.

Inventories covering Roessler and Hasslacher Chemical Company stock for various trusts forwarded by Columbia Trust Company.

Four-page letter received from Roessler and Hasslacher Chemical Company in which they list all enemy credits, including some $174,718.89 due Deutsche Gold und Silber Scheideanstalt Vormals Roessler. Demands were immediately issued for this money and forwarded to Roessler and Hasslacher Chemical Company for service.

August 8, 1919. Messrs. Emery, Varney, Blair, and Hoguet advise this office that they have requested Mr. Rigney to forward the demand covering Trust 41395, same being withheld owing to the fact that an American citizen claimed the fund covered by the demand. They further state they have informed Mr. Rigney that the reason for withholding the demand was not valid and same should be forwarded immediately.

August 19, 1919. Demand covering Trust 41395 duly acknowledged and returned to this office by Messrs. Emery, Varney, Blair & Hoguet.

August 19, 1919. Above-mentioned demand duly acknowledged by this office.

75 August 19, 1919. Demand for credit balance of $174,718.89 received from Roessler and Hasslacher Chemical Company duly acknowledged. Company asks, however, that payment of this amount be deferred as the company's finances were needed in meeting tax and Liberty bond obligations.

Duplicate bills of Messrs. Wolfe, consulting actuaries, forwarded to Mr. Crocker.

August 22, 1919. Minutes of a special meeting of the board of directors of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

August 27, 1919. Mr. Crocker writes advising that there are no available funds for the payment of the bill of Messrs. Wolfe, but states that the matter will be discussed with Mr. Garvan.

August 28, 1919. Letter to Mr. Warren requesting copies of minutes of all meetings of the board of directors or stockholders of the Roessler and Hasslacher Chemical Company in order that the Alien Property Custodian's record may be complete in this matter.

September 4, 1919. Above-mentioned minutes of a special meeting acknowledged.

September 5, 1919. Mr. Warren advises that copies of all minutes have been forwarded to the Alien Property Custodian.

September 6, 1919. Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

September 5, 1919. Letter to Mr. Paul Mausolff, secretary, Roessler and Hasslacher Chemical Company, enclosing minutes of the meetings of the board of directors of said Roessler and Hasslacher Chemical Company, and requesting that the seal of the corporation be affixed on each of the minutes and returned to this office.

September 5, 1919. Mr. Warren is advised of our letter to Mr. Paul Mausolff under this date.

September 6, 1919. Minutes received under this date acknowledged.

September 8, 1919. Letter written to Mr. Crocker asking him to investigate and see whether or not the Roessler and Hasslacher Chemical Company was now in a position to comply with the demand for $174,718.89.

September 9, 1919. Lee J. Wolfe writes Mr. Dunbar, assistant general counsel for the Alien Property Custodian, requesting that payment be made to him for services and expenses incurred in connection with the Roessler and Hasslacher Chemical Company.

September 13, 1919. Mr. Crocker advises there is no reason why the Roessler and Hasslacher Chemical Company should not comply with the Custodian's demand.

September 15, 1919. Mr. Gaffey, director of bureau of sales, requested to consult with Mr. Crocker, in re the payment of bill presented by Messrs. Wolfe.

September 16, 1919. Roessler and Hasslacher Chemical Company requested to give specific detail regarding some nine certificates listed in Alien Property Custodian's letter under this date.

Letter written to Roessler and Hasslacher Chemical Company insisting on immediate compliance with our demand for the above-mentioned credit balance.

September 24, 1919. Mr. Crocker advises that the bill of Messrs. Wolfe has been presented to the Roessler and Hasslacher Chemical Company for payment.

Letter received from Roessler and Hasslacher Chemical
76 Company stating that on account of the size of the amount, they would reduce it gradually and believed they could pay it all by the end of the year.

September 26, 1919. Mr. Rigney asks that the Alien Property Custodian investigate the Chemical Foundation's use of the trade mark "Trisalyt" as the Roessler and Hasslacher Chemical Company had paid royalties to the Alien Property Custodian in the past and were at the present time making reports of their sales to this office.

September 29, 1919. Letter from Roessler and Hasslacher Chemical Company giving specific details regarding the certificates listed in Alien Property Custodian's letter of Setpember 16th.

September 30, 1919. Roessler and Hasslacher Chemical Company return the copies of the minutes of the board of directors and stockholders duly certified, and call attention to some changes both in the directors and officers of the company.

The Roessler and Hasslacher Chemical Company advise this office as to the time and manner of the payments they contemplate making to dispose of the credit balance of $174,718.89 due this office.

Chemical Foundation informs the Alien Property Custodian that nothing in their files shows that Roessler and Hasslacher Chemical Company had any rights to the above-mentioned trade mark and suggests that the files of this office be investigated with regard to information concerning it.

October 5, 1919. Chemical Foundation was informed that as a result of investigations, it was found that Roessler and Hasslacher Chemical Company had been using the Trisalyt up to April 1919 and had paid royalties up to April 10, 1919, but since that date no royalties had been paid as the trade mark was sold to the Chemical Foundation.

October 8, 1919. Roessler and Hasslacher Chemical Company writes that commencing October 20, 1919, they will pay $35,000 on the 20th and 5th of each month until the amount is paid.

October 16, 1919. Mr. Charles M. Egan, Jersey City, N.J., writes requesting information concerning the present status of Roessler and Hasslacher Chemical Company.

October 18, 1919. Mr. Egan is advised that the Alien Property Custodian offered certain shares of stock of Roessler and Hasslacher Chemical Company for sale but same has not been completed as yet.

Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

Receipt of the above-mentioned minutes acknowledged.

October 21, 1919. Check for $35,000 received from Roessler and Hasslacher Chemical Company as part payment of the credit balance due Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

October 23, 1919. Check posted to trust 12009 in individual trust ledger.

October 24, 1919. Check deposited with Secretary of the Treasury for collection.

November 7, 1919. Second check for $35,000 received from Roessler and Hasslacher Chemical Company on account of credit balance.

November 10, 1919. Check posted in account no. 12009.

November 15, 1919. Check deposited with the Secretary of the Treasury for collection.

77 November 15, 1919. Treasury Department informs this office that they are now auditing income and excess profits tax returns for the Roessler and Hasslacher Chemical Company and requests that if a reduction in the officers' compensation was made after the Alien Property Custodian acquired control of the company, a list of the names of the officers and the salary allowed each should be forwarded to the Treasury Department.

Mr. Guffey is informed by the Division of Examinations of the Alien Property Custodian that before the bill, presented for payment by Messrs. C. D. Giles & Company for services in connection with a special investigation of the Roessler and Hasslacher Chemical Company, can be passed upon, a detailed report covering the investigation should be submitted to this office.

November 18, 1919. Mr. Crocker is advised of the Treasury Department's letter of November 15th, in re compensations paid officers of Roessler and Hasslacher Chemical Company. Mr. Crocker is instructed to furnish the Treasury Department with a brief outline of the compensations allowed for the years 1917 and 1918.

November 21, 1919. Third payment of $35,000 received from Roessler and Hasslacher Chemical Company on account of credit balance.

November 24, 1919. Check posted on Alien Property Custodian trust ledger, trust 12009.

Minutes of meeting of board of directors and of executive committee meetings of the Roessler and Hasslacher Chemical Company acknowledged.

November 25, 1919. Roessler and Hasslacher Chemical Company informs Alien Property Custodian that the Treasury Department had advised them that it would take about six weeks to provide the Liberty bonds necessary for the dividend of 35%, declared in November, of which 20% was to be paid in bonds. Letter states that the Liberty bonds would be forwarded as soon as received.

November 26, 1919. Check deposited with the Secretary of the Treasury for collection.

Messrs. C. D. Giles & Company requested to forward their report covering a special investigation of the Roessler and Hasslacher Chemical Company.

Mr. Wagner informed that the acceptances of the bid of Coffin & Company for certain shares of Roessler and Hasslacher Chemical Company and its allied concerns have been mailed direct to purchaser.

Letter to Mr. Crocker asking him to comply with our letter of November 18th, in re conrpensations paid officers of Roessler and Hasslacher Chemical Company.

December 3, 1919. Mr. Guffey acknowledges receipt of certificate stating that the acceptances of the bid was mailed to Coffin &

Company, and calls attention to the fact that the American Aniline Products, Inc., was a joint bidder with Coffin & Company and formal acceptance should be mailed to them.

Stock powers covering transfer and authorizing the delivery of certain shares of Roessler and Hasslacher Chemical Company and its subsidiaries to the order of Joseph F. Guffey, or to Francis X. Anglim forwarded to Mr. Wagner.

December 4, 1919. Minutes of a special meeting and the executive committee meeting of the Roessler and Hasslacher Chemical Company received.

Letter to Mr. Guffey enclosing our letter of December 4th to the American Aniline Products, Inc., in which we forwarded notice of acceptance of the bid of the highest bidder, Coffin & Company.

December 5, 1919. Minutes received under date of December 4th acknowledged.

78 December 5, 1919. Mr. Crocker advises this office of the amount paid for salaries to officers of the Roessler and Hasslacher Chemical Company for the years 1917 and 1918.

December 6, 1919. Mr. Warren informs Alien Property Custodian that he has tendered his resignation as a director of the Roessler and Hasslacher Chemical Company, but would serve in that capacity until his successor had been elected.

Letter from Mr. Schenck stating that he has sent in his resignation as a director of the Roessler and Hasslacher Chemical Company, but will continue to serve on the board until his successor has been elected.

December 6, 1919. Check for $35,000 on account of credit balance due received from Roessler and Hasslacher Chemical Company.

December 10, 1919. Entered in trust ledger.

December 11, 1919. Check deposited with the Secretary of the Treasury for collection.

December 12, 1919. Letter to Mr. Ruhl, assistant secretary of Roessler and Hasslacher Chemical Company, requesting additional minutes of all meetings of board of directors and stockholders, same to be signed by the secretary of the corporation with its seal affixed thereon.

December 13, 1919. Treasury Department advised of the amount of salaries paid to officers of the Roessler and Hasslacher Chemical Company for the years 1917 and 1918, and advising that no reduction was made of officers' compensations for the year 1918.

December 15, 1919. Roessler and Hasslacher Chemical Company advise that only one meeting has been held since November, and when the minutes of this meeting have been approved, a copy will be forwarded to the Alien Property Custodian.

December 22, 1919. Final payment of credit balance amounting to $34,178.89 received from Roessler and Hasslacher Chemical Company.

Bill of C. D. Giles & Company, Inc., against Roessler and Hasslacher Chemical Company forwarded to Mr. Crocker for payment.

December 23, 1919. Check representing final payment of credit balance entered on trust ledger under account no. 12009.

December 29, 1919. Check deposited with Secretary of Treasury for collection.

January 2, 1920. Bill submitted by Messrs. C. D. Giles & Company for services in examination of the Roessler and Hasslacher Chemical Company approved for payment by Mr. Crocker and forwarded to Mr. Schneider for payment out of the proceeds of sale of stock in said Roessler and Hasslacher Chemical Company. Mr. Schneider is instructed to advise this office when payment of same has been made.

January 8, 1920. Roessler and Hasslacher Chemical Company advise Alien Property Custodian that the resignations of the directors representing him will be acted upon as soon as their successors have been appointed.

January 9, 1920. Minutes of the board of directors' meeting and executive committee meetings of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

Above mentioned minutes acknowledged.

February 7, 1920. Certified copies of the minutes of regular monthly meeting of the board of directors, minutes of a special meeting and also of an executive committee meeting of the Roessler
79 and Hasslacher Chemical Company forwarded by Mr. Warren.

Receipt of above mentioned minutes acknowledged.

March 4, 1920. Mr. Warren sends in minutes of regular monthly meeting of the board of directors and of the executive committee meetings of the Roessler and Hasslacher Chemical Company.

March 6, 1920. Minutes mentioned above acknowledged.

March 17, 1920. Letter to Mr. Crocker enclosing copy of a letter received from the Office of A. Iselin & Company in re Mexican Roessler and Hasslacher Chemical Company with the request that same be answered.

March 22, 1920. Mr. Crocker advises that he has attended to A. Iselin & Company's letter.

March 29, 1920. Alien Property Custodian informs Mr. Crocker that this office holds 80 shares of capital stock of the Sodium Process Company for the account of Deutsche Gold und Silber Scheideanstalt Vormale Roessler and asks the status of the present outstanding capitalization of said Sodium Process Company.

April 8, 1920. Mr. Crocker is requested to comply with our letter of March 29th, in re Sodium Process Company.

April 9, 1920. Minutes of the meetings of the board of directors and executive committee of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

May 7, 1920. Minutes of a meeting of the board of directors of Roessler and Hasslacher Chemical Company received.

June 4, 1920. Certified copy of the minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

June 18, 1920. Mr. Lee J. Wolfe writes that as soon as the income tax matter of Roessler and Hasslacher Chemical Company is completed as per the new basis prescribed by the Treasury Department, he will forward his report.

July 3, 1920. Mr. Warren submitted new contracts for compensation of the managing group of Roessler and Hasslacher Chemical Company. He advised that the present contracts expire in a few months and the Alien Property Custodian's approval to a new

schedule of compensation based on a division of the profits for a period of one year was asked.

July 10, 1920. Mr. Philip Schleussner, secretary of Roessler and Hasslacher Chemical Company, requested to forward minutes of any additional meetings of the board of directors and stockholders held since March 4th.

July 13, 1920. Minutes of a meeting of the executive committee and of the board of directors of Roessler and Hasslacher Chemical Company received.

July 13, 1920. Mr. Warren requests instructions concerning proposed contracts with the executive officials of Roessler and Hasslacher Chemical Company.

Minutes received under date of July 13th acknowledged.

July 15, 1920. Roessler and Hasslacher Chemical Company advises that copies of minutes of the board of directors' meetings have been forwarded to this office with the exception of the one held on July 9th, and when these minutes have been approved same will be forwarded.

80 July 15, 1920. Letter from Mr. Lee J. Wolfe citing tax situation with respect to Roessler and Hasslacher Chemical Company and stating that to intelligently make a report on the matter he would have to come to Washington and consult the Government returns. Mr. Wolfe requests the Alien Property Custodian to ask the Treasury Department to give him access to these files.

Mr. Warren advised that his letter of July 1st, in re proposed contracts with the executive officials of Roessler and Hasslacher Chemical Company had been forwarded to Mr. Crocker for consideration and no definite action should be taken in this matter until further instructions are received from this office.

Letter to Mr. Crocker enclosing the above-mentioned letter of Mr. Warren. Mr. Crocker is informed that the enemy interest in Roessler and Hasslacher Chemical Company was offered for sale on July 18th but that delivery of stock to the purchaser had not been made as yet and if the delivery is to be made in the near future it is the opinion of this office that the Alien Property Custodian's representatives should not participate in the execution of the new contracts. Mr. Crocker is requested to explain the situation to Messrs. Warren and Schenck and to advise this office when the sale will be consummated.

July 24, 1920. Minutes of meetings of the board of directors of Roessler and Hasslacher Chemical Company received.

August 5, 1920. Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

Minutes received on August 5th acknowledged.

August 7, 1920. Mr. Crocker advises that he has written to Messrs. Warren and Schenck in answer to their letter of July 1st.

August 18, 1920. Mr. Emil Stremlau, of Perth Amboy, N.J., writes on behalf of a client in connection with certain royalty payments paid over by the Roessler and Hasslacher Chemical Company to this office and requests instructions in re the recovery of this money.

August 30, 1920. Mr. Stremlau's letter forwarded to Mr. Crocker with the request that this matter be discussed with the proper officers of Roessler and Hasslacher Chemical Company.

Receipt of Mr. Stremlau's letter acknowledged and he is advised that instructions will be forwarded in a subsequent letter.

September 9, 1920. Minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

September 10, 1920. Above-mentioned minutes acknowledged.

September 14, 1920. Mr. Crocker requested to advise what action he has taken in re Mr. Stremlau's letter of August 18th.

October 4, 1920. Mr. Stremlau inquired under this date if special application had to be presented by his client for the recovery of certain royalty payments.

October 8, 1920. Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

October 19, 1920. Mr. Crocker informs this office that after a conference with Roessler and Hasslacher Chemical Company, in re repayment of certain royalties claimed by Mr. Stremlau on behalf of a client, said company is willing to consent to the payment of the moneys alleged to be due and suggests that the Alien Property Custodian advise Mr. Stremlau to file claim as provided under section 9.

81 October 19, 1920. Mr. Crocker acknowledges instructions of the Alien Property Custodian in re resale of stock in the Roessler and Hasslacher Chemical Company and its associated companies.

Mr. Crocker is requested to give particulars concerning the rejection of Mr. Armour's bid.

Letter to Mr. Stremlau enclosing claim blanks to be filed for the recovery of certain moneys alleged to be due his client.

October 23, 1920. Letter received from Mr. Gifford enclosing a copy of a letter from Ernst Sennewaldt, a Russian, who claims twenty shares of Roessler and Hasslacher Chemical Company stock. Mr. Gifford requests that this matter be given attention.

October 25, 1920. Mr. Crocker advises Alien Property Custodian that at present a resale of the Roessler and Hasslacher Chemical Company stock will not be necessary.

November 2, 1920. Claim blanks returned by Mr. Stremlau acknowledged and forwarded to section 9 Division of the Alien Property Custodian for consideration.

November 6, 1920. Mr. Gifford's letter received under date of October 23d forwarded to Mr. Crocker.

November 10, 1920. Mr. Crocker acknowledges above-mentioned letter and advises that he will take care of the matter.

November 11, 1920. Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

November 22, 1920. Above-mentioned minutes acknowledged.

November 27, 1920. Mr. Warren forwards certified copy of minutes of the regular monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company.

November 27, 1920. Under this date the Alien Property Custodian acknowledges the minutes mentioned above.

December 9, 1920. Certified copy of minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

December 15, 1920. Mr. Gifford writes that the Roessler and Hasslacher Chemical Company has received notice from Paul C. Hinrichs, claiming eighty-six shares of this company's stock and the dividends thereon, and asking that the stock of Mr. Hinrichs, and also that of Mr. Sennewaldt mentioned in a previous letter, be excluded from any future sales of the Roessler and Hasslacher Chemical Company.

December 20, 1920. Minutes received under date of December 9th acknowledged.

December 29, 1920. Mr. Gifford is informed that the cases of Messrs. Paul C. Hinrichs and Ernst Sennewaldt will be given consideration.

January 6, 1921. Certified copy of minutes of the regular monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

January 11, 1921. List of debits in re Roessler and Hasslacher Chemical Company forwarded by Mr. Anthony.

Above-mentioned minutes of the regular monthly meeting acknowledged.

82 January 15, 1921. Mr. Lee J. Wolfe inquires when payment of the bill presented in December may be expected.

January 26, 1921. Mr. Crocker is requested to advise this office if the bill of Mr. Lee J. Wolfe is to be paid by Roessler and Hasslacher Chemical Company or from funds on deposit in the United States Treasury.

January 29, 1921. Philip M. Caul & Company inquire concerning the present status of the Roessler and Hasslacher Chemical Company.

Mr. Crocker writes that the bill of Mr. Lee J. Wolfe should be paid out of the trust funds if the amount is approved by the Alien Property Custodian.

January 31, 1921. Philip M. Caul Company is informed that the Alien Property Custodian has seized the enemy interest in Roessler and Hasslacher Chemical and that the control of the corporation lies in a certain number of shares, the ownership of which is now in dispute.

February 4, 1921. Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

Minutes referred to above acknowledged.

Messrs. S. H. & Lee J. Wolfe are informed that their bill of $2,598.27 for services in re Roessler and Hasslacher Chemical Company has been disallowed by the Alien Property Custodian.

February 15, 1921. Mr. Lee J. Wolfe writes that he has discussed the matter of the payment of the above-mentioned bill with Mr. Garvan who, in turn, has promised to take the matter up with this office.

February 17, 1921. Copies of the agreement executed February 9, 1921, between the Alien Property Custodian and Bernard R. Armour and the American Aniline Products, Inc., the highest bidders at the auction conducted in contemplation of sale of the enemy interest in the Roessler and Hasslacher Chemical Company and its subsidiaries forwarded to Mr. Crocker.

February 18, 1921. Mr. Lee J. Wolfe is informed that the bill for services in re Roessler and Hasslacher Chemical Company will receive further consideration by the Alien Property Custodian.

February 19, 1921. Mr. Garvan is requested by Mr. Lee J. Wolfe to approve the above-mentioned bill for payment.

February 26, 1921. Stock powers and designations as depositary, dated December 2, 1919, and prepared in anticipation of the sale of the Roessler and Hasslacher Chemical Company, were withdrawn and destroyed inasmuch as the sale was not to be consummated at this time.

March 1, 1921. Mr. Crocker forwards original copy of the Roessler and Hasslacher Chemical Company settlement agreement and an original receipt.

Above-mentioned agreement acknowledged.

March 2, 1921. Mr. Lee J. Wolfe requested to forward duplicate statement of services rendered in connection with the Roessler and Hasslacher Chemical Company.

March 3, 1921. Duplicate statement received from Mr. Lee J. Wolfe.

March 16, 1921. Minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

March 17, 1921. Minutes received under date of March 16th acknowledged.

83 April 7, 1921. Minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren. Mr. Warren advises that the annual meeting of the Roessler and Hasslacher Chemical Company scheduled for the first week in March has not been held.

Above-mentioned letter acknowledged.

April 18, 1921. Mr. Lee J. Wolfe forwards receipted bills covering services in connection with the Roessler and Hasslacher Chemical Company.

April 29, 1921. Two-page letter from Mr. Gifford referring to the voting-trust agreement which was discussed at a conference held on April 12th. Copy of voting trust agreement enclosed. Mr. Gifford also refers to Mr. Hasslacher's will and states he will be in Washington from Monday until Wednesday of the following week and will consult with the Alien Property Custodian regarding these matters.

Copy of Mr. John Simon's decree forwarded to Mr. Crocker. Letter states that Colonel Miller would carry Mr. Gifford's letter, written subsequent to conference held on April 12th, with him to New York for Mr. Crocker's attention.

May 10, 1921. Mr. Crocker requests copies of all demands made in connection with the Roessler and Hasslacher Chemical Company and its allied concerns.

May 12, 1921. Minutes of the directors' meeting of the Roessler and Hasslacher Chemical Company received.

Telegram from Mr. Crocker requesting testimony sent Colonel Miller by Mr. Gifford.

May 14, 1921. Minutes received under date of May 12th acknowledged.

May 20, 1921. Photostatic copies of all demands on the Roessler and Hasslacher Chemical Company and its allied concerns forwarded to Mr. Crocker.

May 26, 1921. Above-mentioned copies of demands acknowledged by Mr. Crocker.

June 9, 1921. Minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

Above-mentioned minutes acknowledged.

July 6, 1921. Letter from the State Department enclosing a copy of a letter received from the American consul general at Zurich, Switzerland, asking for instructions regarding the disposal of a package of glass photographic plates. The State Department asks to be informed on this matter.

The State Department is advised that it will be to the best interests of the Alien Property Custodian's Office that the package of glass photographic plates stored in the office of the American consul general at Zurich, Switzerland, be permitted to remain there until such time as certain matters which are now the subject of litigation between the Alien Property Custodian and others are properly adjusted, and when this time arrives, the State Department will be advised.

July 11, 1921. Letter to Mr. Crocker inquiring if the demand covering certain shares of Roessler and Hasslacher Chemical Company stock, the ownership of which has been disputed, has been complied with.

In order to complete the files in this office in connection with the sale of enemy interests in the Roessler and Hasslacher Chemical Company and its subsidiary companies, a copy of the original memorandum executed on the day of sale forwarded to Mr. Ditchey with the request that same be signed and returned to this office. Mr. Ditchey acted as auctioneer for the Alien Property Custodian in this sale.

84 July 14, 1921. Minutes of the meeting of the board of directors of Roessler and Hasslacher Chemical Company received.

July 15, 1921. Minutes referred to above acknowledged.

Mr. Ditchey returns memorandum duly executed.

August 4, 1921. Minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

August 5, 1931. Minutes received under date of August 4th, acknowledged.

August 6, 1921. Mr. Crocker requests that a new demand be issued on Roessler and Hasslacher Chemical Company directing the transfer of 3,800 shares to Colonel Miller's name. Mr. Crocker states he will attend to the service of the demand and will cooperate with United States attorney in the procurement of the necessary orders to enforce it.

August 9, 1921. Letter from Mr. Crocker requesting that the demand covering the transfer of some 3,800 shares of Roessler and Hasslacher Chemical Company stock be forwarded as soon as possible.

August 18, 1921. Roessler and Hasslacher Chemical Company requested to issue a certificate in the name of "Thomas W. Miller,

as Alien Property Custodian, Trust No. 12009", covering the transfer of 3,800 shares of this company's stock.

Three letters directed to the Roessler and Hasslacher Chemical Company and its allied concerns forwarded to Mr. Crocker.

August 25, 1921. Inasmuch as Mr. Crocker was unable to connect with Colonel Miller when he was in New York, the above-mentioned letters were returned to this office with the request that they be signed by Colonel Miller.

The above-mentioned letters, covering the transfer of stock, signed by Colonel Miller returned to Mr. Crocker.

August 30, 1921. Mr. Crocker acknowledges receipt of the above-mentioned letters.

September 15, 1921. Certified copy of the minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

September 21, 1921. Minutes received under date of September 15th acknowledged.

September 23, 1921. Mr. Crocker wires that he be authorized to appear in behalf of the Custodian to fight order restraining the Custodian from compelling Roessler and Hasslacher Chemical Company to issue new certificates for 3,800 shares. Authority granted.

September 26, 1921. Mr. Crocker wires that the hearing scheduled for September 26th has been postponed.

September 27, 1921. A chart showing the actions now pending under section 9 by various persons alleging ownership of respective portions of the 3,800 disputed shares of the Roessler and Hasslacher Chemical Company forwarded to Mr. Burke, of Pittsburgh, Pa.

October 4, 1921. Columbia Trust Company was authorized to deliver to Mr. Anson McC. Beard, attorney for the companies, 3,800 shares of Roessler and Hasslacher Chemical Company stock, 240 shares of Niagara Electric Chemical Company stock, and 80 shares of Perth Amboy Chemical Company stock to be transferred to voting trustees under a voting trust agreement executed by the record owners.

October 6, 1921. Minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company received from Mr. Warren.

85 October 7, 1921. Minutes referred to above acknowledged.

October 11, 1921. Columbia Trust Company informs this office that 3,585 shares of Roessler and Hasslacher Chemical Company capital stock have been delivered to Mr. Anson McC. Beard, also 240 shares of Niagara Electro Chemical Company capital stock and 80 shares of Perth Amboy Chemical Company capital stock. Letter further states that the outstanding 215 shares of Roessler and Hasslacher Chemical Company, alleged to be owned by American citizens, are withheld pending the outcome of certain suits to test such cases.

October 15, 1921. List of the property to be deposited under voting trust agreement forwarded to Columbia Trust Company with the request that same be delivered to the order of Frank L. Crocker, or his nominee.

Bank of Manhattan Company requested to deliver to Frank L. Crocker, or his nominee, 84 shares of Roessler and Hasslacher Chemical Company to be deposited under voting trust agreement.

Letter to Mr. Crocker instructing him to place the certificates representing the Alien Property Custodian's stockholding in the Roessler and Hasslacher Chemical Company and its subsidiary companies with the voting trustees.

October 19, 1921. Mr. Crocker writes that the certificates in question will be deposited as requested.

Mr. Crocker wires requesting two copies of the Roessler and Hasslacher Chemical Company's trust agreement.

October 21, 1921. Letter from Mr. Crocker enclosing bill in connection with the Roessler and Hasslacher Chemical Company and associated cases.

Blank powers, covering all stock held by the Columbia Trust Company to be deposited under the voting trust, presented by Mr. Ludington of Mr. Crocker's office for the signature and seal of the Alien Property Custodian.

October 22, 1921. Bank of the Manhattan Company writes they have delivered to Frank L. Crocker 84 shares of Roessler and Hasslacher Chemical Company and asks if the usual charge for commission on the principal returned applies.

Letter from Mr. Lockwood, United States attorney, Buffalo, N.Y., enclosing certified copies of a stipulation and order of discontinuance in the case of Carveth against Garvan et al.

Mr. Warren forwards notice issued by the Roessler and Hasslacher Chemical Company to stockholders of that company with reference to the deferring of the dividend for the current year.

October 24, 1921. Mr. Crocker requested to forward copies of the stock powers covering stock to be deposited under the voting trust.

Notice issued by the Roessler and Hasslacher Chemical Company to the effect that there will be no dividend paid to stockholders for the year 1920 acknowledged.

October 25, 1921. Bank of the Manhattan Company advised that the usual charge for commission on the principal returned applies.

October 27, 1921. Certified copies of stipulation and order of discontinuance in the case of Carveth against Garvan et al. acknowledged.

October 29, 1921. Letter from the Columbia Trust Company acknowledging receipt of 5,870 shares of the Roessler and Hasslacher Chemical Company, represented by certificates which are to be exchanged for voting trust certificate, forwarded to this office by Mr. Crocker. Copies of the stock powers also enclosed.

86 November 2, 1921. Above-mentioned letter and enclosures acknowledged.

November 3, 1921. Copy of minutes of a meeting of the board of directors of the Roessler and Hasslacher Chemical Company forwarded by Mr. Warren.

Mr. Edwin S. Schenck is requested to submit his resignation as a director of the Roessler and Hasslacher Chemical Company inasmuch as an agreement has been executed between the Alien Property Custodian and certain stockholders of the Roessler and Hasslacher Chemical Company whereby a majority of the outstanding shares

of the company will be placed in a voting trust for a period of five years.

Similar letter to Mr. George E. Warren requesting his resignation.

November 9, 1921. A copy of Mr. Warren's resignation as a member of the board of directors of the Roessler and Hasslacher Chemical Company received.

November 16, 1921. Receipt of the above-mentioned resignation acknowledged.

Receipt of Mr. Schenck's resignation under date of November 9th acknowledged.

November 19, 1921. Columbia Trust Company transmits list of voting trust certificates held for the Alien Property Custodian, and asks if a fee should be taken at this time, for this special service, or wait until the property of the various trusts is returned.

Columbia Trust Company advised that the question of fee can be discussed when the Alien Property Custodian disposes of this property.

December 1, 1921. Bank of the Manhattan Company informs the Alien Property Custodian that they have received from Messrs. Crocker, Johnson & Shores voting trust certificate #54 for 84 shares Roessler and Hasslacher Chemical Company registered in the name of Thomas W. Miller, Alien Property Custodian.

March 24, 1922. Roessler and Hasslacher Chemical Company requested to forward minutes of directors' meetings held since October 4, 1921, and stockholders' meetings held since March 4, 1919, and also a list of the present board of directors with date of election.

March 30, 1922. Roessler and Hasslacher Chemical Company forwards information requested in our letter of March 24th, in re certified copies of the minutes of directors' and stockholders' meetings and a list of the directors.

March 31, 1922. Above-mentioned minutes acknowledged.

May 8, 1922. Roessler and Hasslacher Chemical Company requested to forward certified copies of minutes of all meetings of directors and stockholders held subsequent to March 7, 1922, and December 20, 1921, respectively.

May 12, 1922. Minutes requested under date of May 8th received.

May 15, 1922. Above-mentioned minutes acknowledged.

October 5, 1922. Letter to Mr. P. Schleussner requesting certified copies of minutes of all meetings of directors and stockholders held subsequent to April 11, 1922, and December 20, 1921, respectively.

October 9, 1922. Above-mentioned minutes forwarded.

October 10, 1922. Minutes received under date of October 9th acknowledged, and minutes of a meeting of the board of directors returned to Roessler and Hasslacher Chemical Company with the request that the seal of the company be affixed thereon.

October 11, 1922. Roessler and Hasslacher Chemical Company return minutes of a meeting of the board of directors held
87 on October 3rd with the company's seal impressed thereon.

A list of the dates of the various directors' meetings held during 1922 also forwarded with the request that this office indicate which particular minutes are still outstanding.

October 13, 1922. Roessler and Hasslacher Chemical Company asked to send certified copies of the minutes of the meetings held July 11th, August 1st, and September 7th.

October 18, 1922. Minutes requested under date of October 13th received.

Above-mentioned minutes acknowledged.

December 1, 1922. A decision having been made to declare stock dividends in the Roessler and Hasslacher Chemical Company and its allied concerns, the custodian was consulted as to the form of his signature to the proxies to be voted at the meetings, and his attention was called to the fact that an understanding should be reached with the voting trustees before the stock dividend was paid as to whether the additional stock should be deposited in the voting trust or not. Mr. R. H. Neilson also presented his resignation as a director of the Roessler and Hasslacher Chemical Company and suggested, if agreeable to the Custodian, that his former partner, Mr. Moffat, be selected in his place.

Minutes of a special meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

December 4, 1922. Mr. Neilson's resignation accepted and Mr. Moffat selected in his place.

December 6, 1922. Mr. Burke, of Pittsburgh, Pa., was informed in connection with the determination of the board of directors of the Roessler and Hasslacher Chemical Company to declare a stock dividend that the present situation be preserved, and that the voting trustees, before they vote at or sign proxies for the Roessler and Hasslacher special stockholders' meeting, should reach an understanding with the holders of all outstanding voting-trust certificates, that the new stock issued by way of stock dividend be deposited under the voting trust agreement.

Similar letters to Mr. Daniel O. Hastings, of Wilmington, Delaware, and to Colonel Meekins, of New York.

December 7, 1922. Roessler and Hasslacher Chemical Company write that at a meeting of the board of directors a dividend of $5.00 a share was declared and a check in payment of this dividend on the shares held in the name of the Alien Property Custodian forwarded to this office.

December 9, 1922. As a result of several conferences held to determine the amount of fee to be paid Messrs. Crocker, Johnson, and Shores for services in connection with the Roessler and Hasslacher Chemical Company, Mr. Cravath writes that a fee from $25,000 to $30,000 would be considered very moderate.

December 15, 1922. Mr. H. M. Daugherty, Attorney General, writes in connection with the fee to be paid Messrs. Crocker, Johnson, and Shores, and states that inasmuch as the Government is, in a sense, a trustee in this matter, compensation should be fixed somewhat in proportion to that received by capable Government attorneys, and suggests that a fee of $20,000 be paid to Messrs. Crocker, Johnson, and Shores.

December 21, 1922. Roessler and Hasslacher Chemcal Company informs this office that they have issued Certificate No. 151 for 8,805 shares to the Columbia Trust Company, and Certificate No. 152 for 126 shares to the Bank of the Manhattan Company, both in payment of the 150% stock dividend.

December 26, 1922. Columbia Trust Company inquires if Certificate No. 151 should be split up so as to place certificates in the various trusts.

December 28, 1922. Columbia Trust Company informed that Certificate No. 151 should be split up.

88 January 5, 1923. Voting trust agreement and explanatory letter received from Mr. Gifford for consideration and approval.

January 8, 1923. Alien Property Custodian informed Colonel Meekins that the voting trust agreement was not satisfactory in that too much power was given to the depositary. Certain lines were also suggested which "must be omitted" and certain lines were ordered rewritten. After returning this agreement to New York, a wire was sent to Mr. Hastings requesting him not to sign until amendments, suggested by the Alien Property Custodian, had been included.

January 8, 1923. Check amounting to $10,430.13 forwarded to Messrs. Crocker, Johnson, and Shores for attorneys' fees and expenses in connection with the Roessler and Hasslacher Chemical Company, following the rendering of a bill outlining this firm's services for a period of almost five years.

January 12, 1923. Certified copies of the minutes of the meeting held on November 9th requested.

January 16, 1923. Copies of the minutes requested under date of January 12th received.

Above-mentioned minutes acknowledged.

January 18, 1923. Voting trust agreement returned to Alien Property Custodian for further consideration and approval.

Alien Property Custodian's approval withheld from the voting trust agreement pending an explanation.

January 26, 1923. Colonel Meekins explains that on account of the stock dividend it was necessary to register and countersign the additional shares of stock issued as a stock dividend.

January 27, 1923. Columbia Trust Company writes that Certificate No. 151 has been split up as requested and individual certificates placed in the various trusts. Certificates for one-half shares were not issued, instead a check for $600, representing the value thereof, was forwarded with the request that the appropriate share be credited to each of the trusts concerned.

January 31, 1923. Certified copies of the minutes of the board of directors' meeting held December 7th requested.

February 6, 1923. Columbia Trust Company requested to furnish this office with a full description of the 8,805 shares deposited with them in the name of the Alien Property Custodian.

February 7, 1923. Mr. Burke is advised that it is in order for him to sign the revised agreement regarding the deposit of new stock of the Roessler and Hasslacher Chemical Company.

Two-page letter forwarded to Mr. Gifford explaining and outlining in detail the changes desired by the Custodian in the agreement regarding the deposit of the new stock of the Roessler and Hasslacher Chemical Company.

February 14, 1923. Mr. deLancey Kountze requested to forward certified copies of the minutes of the directors' meeting held December 28, 1922, also a copy of certificate of increase of capital stock of the Roessler and Hasslacher Chemical Company.

Copies of the minutes of the regular monthly meetings of the board of directors of the Roessler and Hasslacher Chemical Company acknowledged.

February 21, 1923. Certificate of increase of capital stock of the Roessler and Hasslacher Chemical Company received.

89 February 22, 1923. Colonel Meekins forwards notice of a meeting of the voting trustees to be held on March 6, 1923, and asks for instructions.

February 27, 1923. Colonel Meekins instructed to submit the names of Douglas M. Moffat, deLancey Kountze, and James Francis Burke to be voted on as directors representing the Alien Property Custodian.

March 14, 1923. Minutes of the regular monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company and minutes of the annual meeting of the stockholders of said company received.

Minutes mentioned above acknowledged.

March 15, 1923. Certified copy of the minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company held March 14th received.

Columbia Trust Company, as requested, furnished a list giving the full description of the 8,805 shares representing 150% stock dividend on the stock of the Roessler and Hasslacher Chemical Company.

March 20, 1923. Colonel Meekins requested to forward to this office a copy of the January agreement regarding deposit of new stock of the Roessler and Hasslacher Chemical Company. Colonel Meekins is also requested to advise this office as to the number of shares transferred to Columbia Trust Company and name of appointee designated to make transfers.

April 3, 1923. Mr. Crocker is requested to forward an itemized bill covering charges in connection with the Roessler and Hasslacher Chemical Company and its allied concerns.

April 5, 1923. Certified copy of the minutes of the meeting of the board of directors of the Roessler and Hasslacher Chemical Company held March 21st received.

Minutes referred to above acknowledged.

April 6, 1923. Roessler and Hasslacher Chemical Company informed this office that a stock dividend of 1½% was declared and checks covering same were forwarded to the Columbia Trust Company and the Bank of Manhattan Company, depositaries for the Alien Property Custodian.

April 10, 1923. Itemized bill covering Messrs. Crocker, Johnson, and Shores charges in connection with the Roessler and Hasslacher Chemical Company received.

May 3, 1923. Certified copy of the minutes of directors' meeting of the Roessler and Hasslacher Chemical Company received.

The above-mentioned minutes duly acknowledged.

June 6, 1923. Certified copy of the minutes of directors' meeting held May 1st received.

June 7, 1923. Copy of minutes received under date of June 6th acknowledged.

June 29, 1923. Colonel Meekins forwarded Mr. Gifford's letter of June 27th which was accompanied by a copy of an instrument prepared by Mr. Gifford in January of 1923, the intent of which was

to vest in the Columbia Trust Company power to transfer the stock to the parties entitled thereto on the termination of the original voting trust agreement.

July 5, 1923. Certified copy of the minutes of board of directors' meeting of the Roessler and Hasslacher Chemical Company held June 5th received.

90 July 6, 1923. Minutes received under date of July 5th duly acknowledged.

July 27, 1933. Copy of instrument executed January 1923 forwarded to the Columbia Trust Company with the request that the blanks be filled in to conform with the original.

July 30, 1923. Colonel Meekins requested to advise this office of the book and market value of the stock of the Roessler and Hasslacher Chemical Company.

August 2, 1923. Columbia Trust Company returned copy of instrument forwarded them under date of July 27th duly executed.

August 4, 1923. Colonel Meekins forwards letter from Roessler and Hasslacher Chemical Company in which they state that the book value of stock can be appraised as of December 31, 1922.

August 6, 1923. Roessler and Hasslacher Chemical Company further advise that, based on its present and prospective earning power, a fair estimate of the value of the stock should not exceed par: that is, $100 per share.

August 8, 1923. Certified minutes of the board of directors' meeting held on July 3rd acknowledged.

September 12, 1923. Certified copy of minutes of directors' meeting held August 7th received.

Above-mentioned minutes acknowledged.

September 24, 1923. Notice of claim under section 9 for the return of $10,000 held by Messrs. Cravath, Henderson & de Garsdorff, who filed power of attorney from the Deutsche Gold und Silber Scheideanstalt vormals Roessler.

September 25, 1923. Deutsche Gold und Silber Scheideantalt vormals Roessler's claim under section 9 given no. 19196, entered on Alien Property Custodian claim records and assigned to an attorney for consideration.

October 3, 1923. Certified copy of minutes of the board of directors' meeting held September 11th received.

October 4, 1923. Receipt of above-mentioned minutes acknowledged.

November 14, 1923. Certified copy of minutes of the board of directors' meeting held October 2nd received.

November 19, 1923. Mr. Warren requests information concerning the liquidation of the remaining enemy stock in the Roessler and Hasslacher Chemical Company and its allied concerns, and states that an American syndicate, consisting wholly of Americans and an American corporation, is desirous of negotiationg for the purchase of the enemy property.

November 20, 1923. Alien Property Custodian advised that the Columbia Trust Company has received powers of attorney from the Deutsche Gold und Silber Scheideanstalt vormals Roessler, and that there will shortly be forthcoming powers of attorney from other former German owners of 2,044 shares of Roessler and Hasslacher Chemical Company.

In answering Mr. Warren's inquiry of November 20th, he was advised that the policy of this office in liquidating the stock is to insist on assents from the enemy to a proposed sale, and also clearances from the enemy as to the acts of the present Custodian and his predecessors in the particular trust involved.

November 22, 1923. Columbia Trust Company advised the Alien Property Custodian that it was prepared to bid $70.00 a share for the enemy interests in the Roessler and Hasslacher Chemical Company and its allied concerns.

91 November 22, 1923. Colonel Miller writes the Columbia Trust Company accepting their offer in re purchase of enemy stock in the Roessler and Hasslacher Chemical Company and its allied concerns, and states he will be in New York on November 26, 1923, to negotiate the details of the transfer.

November 24, 1923. Mr. Warren notifies this office that pursuant to instructions he has received powers of attorney from individual stockholders of the Roessler and Hasslacher Chemical Company, representing in the aggregate 1,694 shares.

November 26, 1923. Depositary notified that 11,849 shares, including 9,920 for Deutsche Gold und Silber Scheideanstalt vormals Roessler, had been sold and that the appropriate stock certificates, properly endorsed, were to be delivered against the payment of $829,430, and that this sum should be accounted for on their next quarterly statement.

Roessler and Hasslacher Chemical Company was sent a list of the former owners of 11,849 shares of stock which had been sold, and the company was instructed to forthwith make such entries on their books and records and such transfers as may be necessary to transfer the title and ownership of this stock to the Columbia Trust Company.

November 27, 1923. Conference between Colonel Miller, Alien Property Custodian, and Mr. George E. Warren, vice president of the Irving Bank-Columbia Trust Company, in which the Alien Property Custodian requested Mr. Warren to obtain from the former owners of the Roessler and Hasslacher Chemical Company stock clearances covering the acts of A. Mitchell Palmer, as Alien Property Custodian, Francis P. Garvan, as Alien Property Custodian, and Thomas W. Miller, as Alien Property Custodian, as well as the Treasurer of the United States and the President of the United States covering the administration of all trusts involved in this sale, including Trust 12009. It was also decided at the conference that the necessary revenue stamps on the transfer of stock certificates should be paid out of the funds in the trusts held by the depositary and that 2½% was to be paid on the proceeds of this sale during the time it was on deposit in the Irving Bank-Columbia Trust Company. It was further decided that Liberty bonds, or gilt-edge bond security in the amount of the cash deposit should be secured and be deposited with the Federal Reserve Bank in New York City.

November 30, 1923. Letter from the depositary advising that checks at the rate of $70.00 per share, or a total of $829,430, had been received and credited to the various trusts, Trust 12009 being credited with $694,003.20.

November 30, 1923. With reference to the obtaining of clearances from former owners of the Roessler and Hasslacher Chemical Company as agreed on at the conference of November 27th, Mr. Warren asks that he be furnished with a copy of the form desired.

December 4, 1923. Telegram from Mr. Warren asking that the form for general release requested on November 28th be forwarded.

Alien Property Custodian notifies Mr. Warren that he would be in New York within the next few days and would take up the matter of obtaining commercial paper as security for the cash being held on account of the sale of the shares in the Roessler and Hasslacher Chemical Company. Twenty blank assents to the sale to be signed by the former owners were forwarded to Mr. Warren.

December 5, 1923. Certified copy of minutes of the board of directors' meeting of the Roessler and Hasslacher Chemical Company held November 13th received.

Receipt of above-mentioned minutes acknowledged.

92 December 6, 1923. Mr. Warren acknowledged the receipt of the forms of release and assents to the sale of stock to be executed by enemy aliens interested in the stock of the Roessler and Hasslacher Chemical Company and its subsidiaries.

January 9, 1924. Certified copy of minutes of the board of directors' meeting of Roessler and Hasslacher Chemical Company held on December 4th received.

January 10, 1924. Above-mentioned minutes acknowledged.

January 25, 1924. Duly executed assents to the sale of stock in Roessler and Hasslacher Chemical Company and its subsidiaries forwarded by Mr. Warren and also a list of the stockholders who executed these assents, together with the amount of their shares and the trust number. Trust 12009, Deutsche Gold und Silber Scheideanstalt Vormals Roessler for 9,920 shares being included.

February 7, 1924. Certified copy of minutes of the board of directors' meetings of Roessler and Hasslacher Chemical Company held January 8th and January 22nd received.

February 11, 1924. Minutes referred to above acknowledged.

February 20, 1924. Claim 19196 submitted to Alien Property Custodian Corporation Management Division for recommendation.

February 28, 1924. Irving Bank-Columbia Trust Company advised Alien Property Custodian that they would forward on February 28th the proceeds of the sale of stock of Roessler and Hasslacher Chemical Company and its allied concerns, together with interest.

March 12, 1924. Minutes of the regular monthly meeting of the board of directors of the Roessler and Hasslacher Chemical Company received and also the minutes of the annual stockholders' meeting, together with the minutes of the board of directors' meeting held immediately following the annual stockholders' meeting.

Minutes referred to above acknowledged.

March 13, 1924. Mr. Gifford writes that at the annual stockholders' meeting, held on March 11th, Messrs. James Francis Burke and DeLancey Kountze were reelected as directors to represent the Alien Property Custodian for the ensuing year. Mr. George E. Warren, vice president of the Irving Bank-Columbia Trust Company, was also elected as a director in place of Mr. Moffat, inasmuch as Mr. Moffat had been suggested as a representative of foreign interests.

March 15, 1924. Audit section of the Alien Property Custodian requested to investigate and supply audit for the return of the property claimed.

Treasury check in the sum of $5,000 forwarded to Mr. Crocker in payment of professional services rendered and expenses incurred in connection with the Roessler and Hasslacher Chemical Company and its allied concerns.

March 17, 1924. Audit prepared on claim 19196 against Trust 12009 and claim forwarded to the claims section for action.

March 18, 1924. Mr. Gifford advised that the election of Mr. George E. Warren in place of Mr. Moffat was satisfactory to this office.

March 24, 1924. Attorney in claims section, after due consideration and investigation, recommends claim 19196 for allowance.

March 28, 1924. Recommendation of claims section for allowance approved by managing director.

93 April 5, 1924. Certified copy of the minutes of the regular monthly meeting of the board of directors of Roessler and Hasslacher Chemical Company held April 1st received.

April 7, 1924. Receipt of minutes referred to above acknowledged.

April 7, 1924. Orders issued on the Treasury to draw check payable to the attorneys in fact for $9,900 from Trust 12009.

April 15, 1924. Treasury Department sends check to Alien Property Custodian for $9,900 to be delivered to attorneys for Deutsche Gold and Silber Scheideanstalt vormals Roessler.

April 19, 1924. Withdrawal of $9,900 in favor of Deutsche Gold under Silber Scheideanstalt vormals Roessler and $100 administrative expense entered on Alien Property Custodian ledgers.

May 13, 1924. Messrs. Cravath, Henderson, and de Gersdorff requested to sign and return releases in connection with the delivery of $9,900 under claim no. 19196.

May 19, 1924. Receipt and releases received, together with affidavit, that fees would not exceed 3%.

May 20, 1924. Check forwarded to attorneys for claimant, Deutsche Gold und Silber Scheideanstalt vormals Roessler.

May 24, 1924. Letter received from attorneys acknowledging the receipt of $9,900, and asking if this sum included any income or profits from the sale of stock in regard to which it would be necessary for said attorneys to make a return to the Commissioner of Internal Revenue. This letter was forwarded to our tax section for consideration.

June 3, 1924. An extensive outline of the tax situation insofar as it concerned property under the jurisdiction of the Alien Property Custodian prepared and forwarded to attorneys for the claimant.

June 4, 1924. Certified copy of minutes of meeting of the board of directors of the Roessler and Hasslacher Chemical Company received.

June 5, 1924. Above-mentioned minutes acknowledged.

June 6, 1924. Acknowledgement of tax letter received.

July 9, 1924. Certified copy of minutes of board of directors' meeting of the Roessler and Hasslacher Chemical Company received.

July 10, 1924. Minutes acknowledged.

October 14, 1924. Income in the sum of $10,000 for the year ending March 4, 1924, forwarded to attorneys for Deutsche Gold und

Silber Scheideanstalt vormals Roessler, as provided under section 23 of the Trading with the Enemy Act.

January 21, 1925. Letter from Mr. Warren announcing the completion of the sale of all shares for which the Roessler and Hasslacher Chemical Company Syndicate bid. Upon the conclusion of this transaction Mr. Warren said: "The management of the Roessler and Hasslacher Chemical Company are deeply appreciative of the courteous treatment they have received from you in connection with these holdings. They are now a representative American concern, with the exception of the few shares you still hold representing German owners. The company is thoroughly Americanized, not only in fact, but in spirit, and I believe it will become one of our most important industrial companies in time. * * * I am confident that the course pursued has been for the best interests of the country as well as of those interested in the chemical industry."

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February 7, 1925. Three-page letter received from Mr. Hamann, first vice president of the Roessler and Hasslacher Chemical Company, pointing out that the purpose for which the voting trust had been instituted had been accomplished; that is, that the Roessler and Hasslacher Chemical Company had become thoroughly Americanized, and that its subsidiary corporations, Perth Amboy Chemical Company and Niagara Electro Chemical Company, have either been merged with the Roessler and Hasslacher Chemical Company or were soon to be taken over. Although the voting trust agreement would still be in effect for approximately one year and eight months, Mr. Hamann suggested that the agreement be dissolved and the Alien Property Custodian's directors in the company resign.

February 13, 1925. Colonel Miller replying to Mr. Hamann's letter stated that he would be in New York on February 16th, and at that time would discuss with Mr. Hamann and Mr. Warren the proposition to dissolve the voting trust agreement.

February 15, 1925. Mr. Hamann agrees to attend the conference on February 16th.

February 16, 1925. Conference held in New York between the Custodian and representatives of the Roessler and Hasslacher Chemical Company at which it was agreed that the voting trust be dissolved and the Alien Property Custodian's directors resign.

February 27, 1925. Complying with the agreement reached at the conference of February 16th, Mr. James Francis Burke's resignation as a director is submitted to the Roessler and Hasslacher Chemical Company with the suggestion that pursuant to the terms of the voting trust agreement, whereby the Alien Property Custodian was to appoint Mr. Burke's successor, Mr. Philip Schleussner be named as Mr. Burke's successor, this selection having been approved by the Roessler and Hasslacher Chemical Company.

Official notification was sent to all the voting trustees under the agreement that the voting trust was terminated and Mr. Burke had resigned.

May 2, 1925. Upon the receipt of a circular letter dated April 23, 1925, announcing the merger of the Niagara Electro Chemical Company with the Roessler and Hasslacher Chemical Company, the Alien Property Custodian authorized the Irving Bank-Columbia

Trust Company, its depositary, to exchange the stock of the Roessler and Hasslacher Chemical Company in accordance with the terms of said letter.

Letter to the Roessler and Hasslacher Chemical Company acknowledging receipt of their circular letter dated April 23, 1925, and informing them of our letter of May 2nd to the Irving Bank-Columbia Trust Company.

May 16, 1925. Roessler and Hasslacher Chemical Company advised the Alien Property Custodian they had deposited with the Irving Bank-Columbia Trust Company voting trust certificates nos. 239 to 253 for a total of 1,303 shares, and that they had paid said bank, for the account of the Alien Property Custodian, $799.60 covering fractional shares accruing to the various trusts together with a dividend of 1½%.

May 21, 1925. Irving Bank-Columbia Trust Company submitted a list of the voting trust certificate numbers, the number of shares and cash for fractional shares received from Roessler and Hasslacher Chemical Company.

June 2, 1925. $10,000 in income for the year ending March 4, 1925, forwarded to attorneys for Deutsche Gold und Silber Scheideanstalt vormals Roessler.

95 September 10, 1925. Balance sheet of the Roessler and Hasslacher Chemical Company as of January 1, 1925, forwarded to Alien Property Custodian.

September 24, 1925. Copy of minutes received of meeting of the stockholders of the Roessler and Hasslacher Chemical Company held April 20, 1925, at which meeting the consolidation of the Roessler and Hasslacher Chemical Company with the Niagara Electro Chemical Company was authorized. Under this same date the Alien Property Custodian also received a copy of the certificate of consolidation, together with a copy of the voting trust agreement dated May 1, 1925, forwarded by Roessler and Hasslacher Chemical Company.

April 22, 1926. The sum of $10,000 representing income for the period ending March 4, 1926, paid to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

March 4, 1927. Copy of the minutes of the annual meeting of the stockholders of the Roessler and Hasslacher Chemical Company held March 1st received.

Minutes received under date of March 4th acknowledged.

October 26, 1927. The sum of $5,000, less administrative expense, representing six months' interest to September 4, 1927, forwarded to attorneys for Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

February 13, 1928. Roessler and Hasslacher Chemical Company advised the Alien Property Custodian that the annual meeting of the stockholders of its company would be held March 6th, for the purpose of electing directors and inspectors of election and taking action upon such other matters as may come before the meeting.

Roessler and Hasslacher Chemical Company advised that a representative of the Alien Property Custodian's office would be present at the meeting to be held on March 6th.

March 30, 1928. There was personally filed with the Alien Property Custodian, through the Washington office of Messrs. Cravath, Henderson, and de Gersdorff, a power of attorney executed by the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

April 6, 1928. Formal notice of claim, in duplicate, for the return of 80% of the property of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler filed pursuant to the provisions of the Settlement of War Claims Act of 1928. This claim was entered on the Custodian's records and given number War Claim 608.

June 18, 1928. The sum of $5,000, less administrative expense, representing six months' interest for the period ending March 4, 1928, forwarded to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

August 20, 1928. War Claim 608 assigned to an attorney in the claims section for consideration.

August 30, 1928. Letter written to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler to submit tax affidavit and tax power of attorney.

September 5, 1928. Consideration of War Claim 608 again taken up, the necessary tax papers having been submitted.

September 7, 1928. Claim approved for allowance and forwarded to the audit section for a complete audit.

October 2, 1928. Audit completed and claim forwarded to tax section for the computation and assessment of any taxes due.

96 February 4, 1929. Schedule received from income-tax section giving detailed figures of the income for the years 1913 to 1927, with amount of tax due. The compilation of the income tax section showed a tax due of $285,601.61.

February 5, 1929. Copy of the tax assessments showing taxes due for the years 1913 to 1927, inclusive, sent to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

February 6, 1929. Formal request received from Mr. Richard H. Wilmer, local representative for the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler, that no portion of the taxes tentatively found to be due and amounting to $285,601.61 be paid until final compilation has been prepared.

War Claim 608 forwarded to the stocks and bonds section of the Alien Property Custodian for an appraisal of the securities held. Among the securities were certain shares of Sodium Process Company and it was necessary to write several letters to ascertain the value of these shares.

February 8, 1929. War Claim 608 referred to Corporation Management Division for approval or disapproval.

Patent and trade-mark section of the Alien Property Custodian asked, with reference to the present situation concerning the patents held in Trust 12009.

February 14, 1929. Approval of the patent section received to the payment of War Claim 608 with the exception of the sum received from the sale to the Chemical Foundation.

February 14, 1929. Corporation management section approves payment of War Claim 608, except for the money received from sale of patents and trades marks to the Chemical Foundation.

Roessler and Hasslacher Chemical Company advised the Alien Property Custodian that the annual meeting of the stockholders of its company would be held March 5th for the purpose of electing directors and inspectors of election and taking action upon such matters as may come before the meeting.

March 12, 1929. Approval of managing director and head of bureau of law received to the allowance of War Claim 608.

April 1, 1929. Formal opinion signed, approving War Claim 608.

April 2, 1929. Check requested from the Treasury Department in the sum of $1,158,887.60. Eighty shares of Sodium Process Company, $5,500 in Liberty bonds, and $6,500 in United States Treasury certificates of indebtedness sent to the attorneys in New York for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler by registered mail.

April 23, 1929. Check mailed attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler in the sum of $1,158,887.60.

April 24, 1929. Income section of the Alien Property Custodian prepares statement of income due and forwards check for $393,100.90 to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

July 12, 1929. Treasury interest for the period from September 15, 1928, to March 15, 1929, amounting to $29,243.89, sent to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

December 2, 1929. Tax section of the Alien Property Custodian notified audit section that the taxes had been determined on War Claim 608 and amount to $255,847.35. Consequently, the difference between that and the amount withheld, to wit, $285,601.61 to pay these taxes may be returned.

97 December 3, 1929. Audit prepared on War Claim 608 for the refund of $29,754.26, the balance of the reservation for taxes.

December 5, 1929. Corporation Management Division approves supplemental allowance for the refund of taxes.

December 23, 1929. Tax section of the Alien Property Custodian receives a request from Mr. Wilmer to forward to the Commissioner of Internal Revenue a request for a sixty-day letter in connection with the 1923 tax deficiency, which deficiency was asserted because of a transaction entirely disassociated with the Custodian's office.

December 30, 1929. Alien Property Custodian forwarded Mr. Wilmer's letter to the Commissioner of Internal Revenue and also wrote Mr. Wilmer that this action had been taken.

January 4, 1930. Managing director approves War Claim 608 for supplemental allowance.

January 6, 1930. Alien Property Custodian approves War Claim 608 for supplemental allowance.

January 14, 1930. Check scheduled for refund of taxes.

January 24, 1930. Income section of the Alien Property Custodian prepares audit and sends check for $6,509.24, representing Treasury interest for the six months' period ending September 15, 1929.

January 29, 1930. Letter received from Mr. Wilmer asking that the balance of the sum withheld for taxes be returned to him.

February 1, 1930. Mr. Wilmer informed by our tax section that in due course all sums withheld by this office on levy by the Commissioner of Internal Revenue would be released.

February 20, 1930. Check received from the Treasury for the refund of reserve for taxes and same mailed to the attorneys for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

May 16, 1930. Computation received from income-tax section recomputing taxes for the Deutsche Gold und Silber Scheideanstalt Vormals Roessler for the years 1913 to 1929.

May 19, 1930. Letter received from Mr. Wilmer acknowledging copy of the recomputation by the Income Tax Unit and requesting that the taxes, penalty, and interest asserted with respect to the year 1923 be not paid.

May 20, 1930. This office paid $55,699.74 income tax for the years 1913 to 1919, inclusive, mailing check for same to the Commissioner of Internal Revenue at Baltimore.

November 3, 1930. Income section of the Alien Property Custodian prepares audit and mails check for $9,245.18, representing Treasury interest for the six months ending March 15, 1930.

January 20, 1931. Income section of the Alien Property Custodian prepares audit and mails check for $9,567.69, representing Treasury interest for the six months' period ending September 15, 1930.

98 April 15, 1931. Alien Property Custodian served with notice of suit by the Deutsche Gold und Silber Scheideanstalt Vormals Roessler, Equity No. 52,733 for the purpose of recovering 2% deducted from principal and income allowances.

April 17, 1931. Letter received from Mr. Wilmer requesting that this office set aside the sum of $60,213.68, the amount sued for, and deposit same in the name of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler, and asked to be advised that this action had been taken.

April 18, 1931. Alien Property Custodian informs Mr. Wilmer that he could not accede to his request to deposit $60,213.68 to the credit of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

May 13, 1931. All sections of the Alien Property Custodian's office notified that the Commissioner of Internal Revenue, under date of May 12, 1931, had requested that all property still held in Trust 12009, together with any subsequently acquired, be withheld pending the tax liability for the year 1923.

99 TRUST No. 12055.—*Holzverkohlungs Industrie Aktiengesellschaft*

Herewith is submitted in some detail a record of services performed by employees of the Alien Property Custodian's office insofar as said services had to do with Trust 12055 in the name of Holzverkohlungs Industrie A. G.

This record is not as complete as it would have been had the entries been made from day to day as the services were performed. If such a record had been kept, it would have been so involved and cumbersome that the end sought would have been defeated and an efficient administration sacrificed.

The record below is based on actual evidence of services as shown by various files in the Alien Property Custodian's Office and is respectfully submitted as an indication of actual performances with the suggestion that it understates the situation rather than otherwise.

December 3, 1917. Letter to Mr. A. Mitchell Palmer, Alien Property Custodian, from Mr. W. L. Saunders, chairman of the Naval Consulting Board of New York, enclosing extracts from German reports published in 1911 and 1912 which showed that the Holzverkohlungs Industrie A. G. was a stockholder in the Perth Amboy Chemical Works.

December 4, 1917. Report on APC Form 100 filed by Roessler and Hasslacher Chemical Company concerning property held for various persons including, among other items, 1,940 shares, certificate no. 5, in the Perth Amboy Chemical Works, New York, and held for the account of Holzverkohlungs Industrie A. G. This report was jacketed and indexed as to enemy and reporter. Report forwarded to the Alien Property Custodian Bureau of Investigation.

December 11, 1917. Roessler and Hasslacher Chemical Company's report returned from Bureau of Investigation to report registry section, where it was entered, no. 1315 assigned to it as a report number and Trust 12055 assigned for the interest of Holzverkohlungs Industrie A. G.

Alien Property Custodian Bureau of Investigation sent report forms in blank to Perth Amboy Chemical Works for report of enemy stockholders based on the letter received from Naval Consulting Board.

December 19, 1917. Report of enemy stockholders received from Perth Amboy Chemical Works. Carded, indexed, and referred to Alien Property Custodian Bureau of Investigation.

December 21, 1917. Report of Perth Amboy Chemical Works received from Bureau of Investigation, sent to report registry, where it was entered and given no. 7412. Trust No. 12055 assigned for the property held for Holzverkohlungs Industrie A. G.

January 22, 1918. Report No. 1315 by Roessler and Hasslacher Chemical Company and Report No. 7412 by the Perth Amboy Chemical Works referred to Bureau of Trusts, Corporation Management Division, for action.

March 1, 1918. Letter received from Perth Amboy Chemical Works reporting additional cash holdings for enemy stockholders.

100 March 22, 1918. Preliminary investigation having been completed, demand was prepared, addressed to the Roessler and Hasslacher Chemical Company, for certificate no. 5 for 1,940 shares Perth Amboy Chemical Works, which certificate was held by Roessler and Hasslacher Chemical Company. Demands were not served immediately and this office wired Roessler and Hasslacher Chemical Company for a conference in Washington on March 27, 1918, concerning this property. Conference arranged by wire and reply received from Roessler and Hasslacher Chemical Company agreeing to attend the conference.

March 25, 1918. Confirmation received from Roessler and Hasslacher Chemical Company confirming telegram in re conference of March 27th.

March 27, 1918. Conference held in office of the Alien Property Custodian with representatives of the Roessler and Hasslacher Chemical Company concerning the said company's subsidiary, Perth Amboy Chemical Works, and the enemy holdings therein.

March 28, 1918. Demands prepared on March 22nd forwarded to Columbia Trust Company for service, with instructions as to the requirements of this office in re depositaries.

April 1, 1918. Letter received from Roessler and Hasslacher Chemical Company giving, as requested in the conference, the names of the officers and directors of the Perth Amboy Chemical Works. This letter also requested copy of the minutes of the conference held on March 27th.

April 5, 1918. Letter received from Columbia Trust Company, as depositary, enclosing demands served on Roessler and Hasslacher Chemical Company for certificate no. 5 for 1,940 shares of Perth Amboy Chemical Works.

April 13, 1918. Inventory of Columbia Trust Company, as depositary, received, saying that said company held for this office certificate no. 5 for 1,940 shares of the capital stock of the Perth Amboy Chemical Works. This inventory was entered on the dockets in corporation management division, forwarded to the stocks and bonds division, where it was appraised and listed on their records, and thence forwarded to accounts division, where this holding was entered on the ledger under trust no. 12055, in the name of Holzverkohlungs Industrie A.G.

Mr. Dean Caldwell, of Washington, D.C., requests to make a survey of the Perth Amboy Chemical Works' property and submits a report of existing insurance and recommendation for any additional insurance that might seem necessary.

April 20, 1918. Report No. 7412, by the Perth Amboy Chemical Works, showing that the Holzverkohlungs Industrie A.G. was the owner of 1,940 shares of this company's stock had not at this time been connected with report no. 1315.

Demand prepared on Perth Amboy Chemical Works for 1,940 shares of common stock, owned by Holzverkohlungs Industrie A.G. This demand mailed to the Irving Trust Company, New York, as depositary, for service. At this time we were not aware that the shares demanded under report no. 7412 were identical with the actual certificates for a like number of shares reported to this office by the Roessler and Hasslacher Chemical Company. These certificates had been demanded and delivered to the Columbia Trust Company as our depositary.

April 23, 1918. Original and duplicate demands returned by the Irving Trust Company with statement that the Perth Amboy Chemical Company had advised that demands had already been presented by the Columbia Trust Company and that the stock would be
101 transferred to its name as depositary for the Alien Property Custodian.

April 30, 1918. Depositary Section, Bureau of Trusts, acknowledges receipt of above demands and explains duplication.

May 1, 1918. Chief of Corporation Management Division submits report to Alien Property Custodian in re Perth Amboy Chemical Works and its affiliation with the Roessler and Hasslacher Chemical

Company. List of Alien Property Custodian's directors in the Roessler and Hasslacher Chemical Company submitted as a guide in naming a director on the Perth Amboy Chemical Works' Board.

May 2, 1918. Mr. W. H. Wells, director appointed by the Alien Property Custodian, advises that there are five directors on the full board of the Perth Amboy Chemical Works.

May 3, 1918. Letters addressed to Mr. Lewis L. Clarke, Mr. George E. Warren, Mr. W. H. Wells, Colonel Robert Grier Monroe, and Mr. Chellis A. Austin asking each to serve when elected and qualified as director of the Perth Amboy Chemical Works, and enclosing an outline of the general policy to be pursued by this office.

May 9, 1918. Colonel Robert Grier Monroe accepts appointment to serve as a director.

Mr. Chellis A. Austin accepts appointment as a director on board of Perth Amboy Chemical Company.

Letter from Mr. Warren accepting appointment to serve as a director and advising that it will be necessary to increase the Board of Directors to provide for the new appointees, this to be accomplished by the existing Board amending the bylaws.

May 10, 1918. Report received from Messrs. Price, Waterhouse and Company on Holzverkohlungs Industrie A.G. This was assigned to the Alien Property Custodian Bureau of Audits for attention.

May 11, 1918. Mr. Lewis L. Clarke writes accepting his appointment to serve on the board of directors of the Perth Amboy Chemical Works.

May 14, 1918. Mr. W. H. Wells accepts under this date appointment to serve on board of directors.

Letter from Federal Trade Commission reporting on status of Perth Amboy Chemical Works. In brief, capital stock composed of 4,000 shares, 1,960 of which are held by Germans in Germany, 1,940 shares held by Roessler and Hasslacher Chemical Company, and 60 shares held by three Americans as qualifying shares.

May 16, 1918. Alien Property Custodian Bureau of Audits writes Messrs. Price, Waterhouse and Company, asking certain questions relative to their report of May 10, 1918.

May 17, 1918. Copy of minute adopted at the noon-day conference of the directors of the bureaus of the Alien Property Custodian on May 8, 1918, mailed to appointees of the board of directors, together with instructions to designate an officer of the company to visa all cablegrams to and from the company and to so advise this office in order that such person so selected may be designated to the cable censor.

May 20, 1918. Letter from Mr. Lewis L. Clarke promising attention to the above matter.

102 May 20, 1918. Letter from Mr. Warren stating that Mr. P. S. Rigney, who is to call on the Alien Property Custodian with a letter of introduction, will probably be designated to visa cablegrams.

May 21, 1918. Answer received from Messrs. Price, Waterhouse and Company to letter dated May 16th. This did not give the necessary information.

May 22, 1918. Letter to Mr. Joseph H. Choate, of the New York Bureau of Investigation of the Alien Property Custodian, forward-

ing him copies of the correspondence with Messrs. Price, Waterhouse and Company, and asking him to investigate and submit a report to this office.

Letters to Alien Property Custodian directors, named but not yet elected, suggesting that detailed information as to values and conditions of the property of the Perth Amboy Chemical Company be obtained at once for the information of this office to determine the value of the enemy interests in the company should it be sold.

May 28, 1918. Second letter to Mr. Choate concerning the Messrs. Price, Waterhouse and Company's report.

June 3, 1918. Letter sent to Mr. Dean Caldwell in charge of the insurance survey of the Perth Amboy Chemical Works with enclosure of a list of the present insurance on the company.

June 5, 1918. Letter from the committee on rubber and kindred products, 17 Battery Place, New York, requesting information as to the directors appointed to represent the interests of the Alien Property Custodian in the Perth Amboy Chemical Works, as said company had applied to the War Trade Board to have their guaranty accepted on crude rubber.

June 10, 1918. Mr. Charles R. Wilson, chairman committee on rubber and kindred products, advised as to the extent of the enemy interest in Perth Amboy Chemical Works and given the names of the persons selected to serve on the board of directors.

June 12, 1918. Receipt of above letter acknowledged by Mr. Wilson.

June 18, 1918. Letter from Mr. Warren suggesting that Mr. Edwin S. Schenck and himself be appointed on the board of the Perth Amboy Chemical Works, as of all the nominees suggested by Mr. Palmer, Mr. Schenck and himself could devote the most time to it. (This matter is discussed more fully in the correspondence in the Roessler and Hasslacher Chemical Company files.)

June 26, 1918. Letter to Mr. Warren stating that this office had been notified of the election of Mr. Rigney as assistant treasurer and that he had been authorized to countersign transfers of stock, checks, drafts, etc. Mr. Warren was requested to ask the directors to place every facility towards becoming familiar with the concern at Mr. Rigney's disposal.

July 1, 1918. Letter from Mr. Warren acknowledging letter concerning Mr. Rigney and his duties as assistant treasurer of the Perth Amboy Chemical Works.

August 8, 1918. Mr. Joseph H. Choate designated by Alien Property Custodian as counsel for Perth Amboy Chemical Works.

103 August 14, 1918. Letter to Mr. Choate requesting balance sheets of Perth Amboy Chemical Works showing deposits, loans, and accounts due from enemies; merchandise, or advances thereon, located within enemy lines; merchandise, or advances thereon, located in neutral countries, but embargoed from shipment; mortgages, loans, and accounts due enemies.

August 16, 1918. Mr. Rigney reported that at a regular meeting of the board of directors, held February 5, 1918, the officers were authorized to fix the dividend to be paid to stockholders of December 31, 1917, and at the regular meeting held April 2nd the treasurer reported that the officers, pursuant to the direction of the board, had fixed the dividend of 30%, which dividend had been paid to the

American stockholders and no part of which was paid to the alien stockholders or to the Alien Property Custodian.

August 19, 1918. Letter from Mr. Warren enclosing statement of the accumulated dividend on stock of Perth Amboy Chemical Works.

August 22, 1918. Perth Amboy Chemical Works directed to remit to the Columbia Trust Company dividends declared on February 5, 1918, amounting to the sum of $58,800, called to the attention of this office by Mr. Warren in his letter of August 19th.

August 22, 1918. Copy of above letter to Mr. Warren.

August 26, 1918. Letter from the assistant treasurer of the Perth Amboy Chemical Works, advising that 30% dividend, less a 2% income tax, would be paid during the course of the week.

August 28, 1918. Above letter acknowledged.

September 4, 1918. Letter received from General Electric Company, Schenectady, New York, inquiring if they could continue business relations with Perth Amboy Chemical Works.

September 5, 1918. Irving Trust Company returned to this office its designation as our depositary for the right, title, and interest in 1,940 shares Perth Amboy Chemical Works reported under report no. 7412, previous demands served through the Columbia Trust Company, our depositary, having secured control of the actual certificates for this stock.

Letter to General Electric Company, Schenectady, New York, informing them they were free to trade with the corporation listed in their letter of August 30th.

September 7, 1918. Columbia Trust Company remits $57,036, representing dividend of 30% on 1,940 shares less a tax deduction of 2%.

September 7, 1918. Letter to Columbia Trust Company informing them that the check for $57,036 was not enclosed as stated in their letter.

September 11, 1918. Mr. Choate acknowledges letter of August 9th, accepting position as counsel for Perth Amboy Chemical Works, if the Custodian had sufficient interest to bring about this result. Also stated that an earlier acknowledgment had been impossible owing to his vacation.

104 September 12, 1918. Letter from Columbia Trust Company enclosing duplicate check for $57,036, and stating that payment of the original check had been stopped.

September 13, 1918. Columbia Trust Company, depositary, forwards a letter from the treasurer of the Roessler and Hasslacher Chemical Company in connection with 80 shares of Sodium Process Company, held in trust 12055 for Holzverkohlungs Industrie A. G., and asks the wishes of the Alien Property Custodian in this matter.

Columbia Trust Company instructed to call upon the Roessler and Hasslacher Chemical Company for the certificates of stock for 80 shares of Sodium Process Company and have the same transferred and usual inventory forwarded to the Alien Property Custodian.

September 24, 1918. Columbia Trust Company states that stock certificates have been issued and inventory for same forwarded to Alien Property Custodian for recording.

September 27, 1918. Letter from Roessler and Hasslacher Chemical Company enclosing balance sheet of Perth Amboy Chemical Company.

September 30, 1918. Receipt of inventory of Columbia Trust Company for 80 shares of Sodium Process Company acknowledged.

September 30, 1918. Letter to Columbia Trust Company, asking that it ascertain the date of the 30% dividend referred to in their letter of September 5th wherein this office received $57,036.

October 8, 1918. Letter to Mr. Warren acknowledging minutes of the directors' meeting of the Perth Amboy Chemical Company and again inquiring as to the increased directorate.

October 14, 1918. At annual meeting of the stockholders of the Perth Amboy Chemical Works the number of directors of the company was increased from five to seven and Mr. Warren and Mr. Schenck elected to represent the Alien Property Custodian for the ensuing year, ending second Monday in October 1919.

Meeting of board of directors immediately following stockholders' meeting. Officers of company elected by board of directors.

October 18, 1918. Letter to Mr. Joseph F. Guffey, director of bureau of sales, New York, instructing that the enemy-owned stock in the Perth Amboy Chemical Works should be sold as soon as Mr. Choate comes to a conclusion as to whether or not the stock in dispute can be obtained.

October 21, 1918. Mr. Warren advises of election of Mr. Schenck and himself to board of directors, and reports that the business of the Roessler and Hasslacher Chemical Company, parent company of the Perth Amboy Chemical Works, has been unusually well conducted: that any effort to dispose of the enemy interests in the Perth Amboy Chemical Works might have a disastrous effect on the sale of Roessler and Hasslacher Chemical Company, and requests that nothing be done with respect to the sale of this stock without first discussing the matter with the Alien Property Custodian's directors.

October 23, 1918. Above letter acknowledged and Mr. Warren advised that no sale will be contemplated until it is finally determined whether or not additional stock is enemy owned. Mr. Heald, of Corporation Management Division, office of the Alien Property Custodian, makes appointment to meet Mr. Warren in New
105 York on October 28, 1918.

October 24, 1918. Mr. Warren forwards copy of minutes of directors' meeting, certificate list of stockholders, affidavit of mailing of notice of annual meeting, stockholders' minutes of annual meeting, minutes of first meeting of directors, and oath and report of inspectors of election. Confirms appointment with Mr. Heald for October 28th.

October 25, 1918. Receipt of above enclosures acknowledged.

October 29, 1918. Columbia Trust Company forwards check for $1,164, representing refund of 2% tax deducted from dividend of 30% declared on Perth Amboy Chemical Works on 1,940 shares held in Trust No. 12055.

October 30, 1918. Mr. Wells asked to report on certain investigations he had been making into the property of Perth Amboy Chemical Works.

November 2, 1918. Copies of Messrs. Price, Waterhouse and Company's report on Perth Amboy Chemical Works sent to Mr. Warren at his request.

November 8, 1918. Mr. Warren informed that Messrs. Price, Waterhouse and Company's report should be considered as only

preliminary; that Mr. Choate was conducting an investigation and was in consultation with these accountants and that as soon as the investigation had been completed a final accounting would be made.

November 12, 1918. Extensive thirty-nine page typewritten report received from Mr. Choate who, on August 9th was appointed counsel for this company. This report was accompanied by a letter of the same date from Mr. Garvan, Director of the Bureau of Investigation. The details of the reorganization of the Perth Amboy Chemical Works were gone into and also details of transfer of shares. This transfer was made in February of 1917, just prior to the declaration of war by the United States. This statement was given a formal Report Number 31764.

November 26, 1918. Special meeting of board of directors of the Perth Amboy Chemical Works held November 26, 1918.

December 3, 1918. Regular bimonthly meeting of the board of directors held in New York on December 3, 1918.

December 19, 1918. Three-page letter received from Mr. Warren telling of efforts, through several weeks past, to work up the sale of enemy interests in Perth Amboy Chemical Company. Following numerous conferences with banking concerns he stated that several prospective syndicates which he had solicited to bid on the stock had decided not to make an offer. Mr. Warren requests interview early in January with the Custodian's Office to discuss this matter.

December 23, 1918. Letter from Mr. Gifford, attorney for Roessler and Hasslacher Chemical Company and its subsidiaries, concerning demands made on owners of said company's stock who purchased same early in 1917. This letter explained that the sale was bona fide and that it was done to remove German interests from the company; that the purchasers were all Americans and suggested a disinterested investigation and possibly a five-year voting trust.

Letter to Mr. Warren stating a conference would be held in New York on January 3rd as requested.

106 January 3, 1919. Conference held in re sale of Perth Amboy Chemical Works, Mr. Warren making detailed report as to his investigations.

January 6, 1919. Check for $57,036 posted to account of trust 12055 and deposited with the Treasury for collection.

January 15, 1919. War Trade Board representatives confer with the Alien Property Custodian concerning sale of Perth Amboy Chemical Works and state that complaint has been made about the refusal of licenses. War Trade Board representatives insist that all enemy stock be turned over to the Alien Property Custodian and urges this office to consult Mr. Choate as to the possibility of obtaining majority control.

January 16, 1919. Telegram from Mr. Garvan to Mr. Whittaker stating the approval of this office to the War Trade Board's action in refusing licenses to Perth Amboy Chemical Works and requesting that no action be taken in this matter without further instructions from Mr. Garvan.

January 25, 1919. Letter to Mr. Choate stating that the patent and trade-mark situation should be investigated and asking for copies of the instruments executed by Mr. Seitz while he was in Germany in February of 1917, and also copies of charters and bylaws of Perth Amboy Chemical Works.

February 4, 1919. Regular bimonthly meeting board of directors held in New York on February 4th.

February 26, 1919. Following an investigation of several weeks into the records of the United States Patent Office, Mr. Will T. Gordon, an attorney employed by the Alien Property Custodian, reported that Patent Nos. 1,178,223 and 1,241,789 were owned by the Holzverkohlungs Industrie A. G. This report was prepared in the office of the Alien Property Custodian and sworn to before the Custodian's notary. It was entered, indexed, and given Report No. 35933 and Trust 12055 assigned.

A demand for the transfer of all the beneficial interest in both these patents was served on the Commissioner of Patents and on the Perth Amboy Chemical Works.

April 1, 1919. Regular bimonthly meeting of board of directors held in New York on April 1, 1919. Treasurer presented trial balance and gain and loss account for the year 1918, whereupon it was decided that on account of the uncertainty of the tax situation the question of dividend would be deferred until a later date.

April 7, 1919. Mr. Gifford writes Mr. Garvan informing him that the Perth Amboy Chemical Works will deliver, under protest, certain shares of that company's stocks in conformity with the demand issued by the Alien Property Custodian, and that suits will be instituted as provided under section 9 for the purpose of establishing the rights and titles of various parties as owner of said stock. Also a lengthy discussion of Mr. Gifford's views of section 9 is submitted.

May 26, 1919. Pursuant to the amendment of November 4, 1918, to the Trading with the Enemy Act, demand was issued and served on the Perth Amboy Chemical Works requiring the cancellation of outstanding certificates of stock and the issuance of new certificates in the name of the depositary by the Alien Property Custodian. The corporation was also instructed, following the issuance of these certificates, to notify the Custodian's office as to the details of each certificate, serial number, date, number, and class of stock, etc.

107 May 26, 1919. Alien Property Custodian holds a conference with Corporation Management Division heads, who submit a draft of a five-page order of sale which, after due consideration, was signed by Mr. Garvan, as Alien Property Custodian.

June 2, 1919. Request to Frank L. Crocker for charter or bylaws of Perth Amboy Chemical Works, together with patent report which Mr. Crocker promised to secure from Mr. Choate's office. Alien Property Custodian to prepare order of sale following form used in Roessler and Hasslacher Chemical Company and immediately upon the advice from Mr. Crocker that the patent situation is clear, action of the Washington committee on sales on the order of sale will be obtained.

June 3, 1919. Corporation Management Division employees prepare two-page digest of situation in re Perth Amboy Chemical Works, as a subsidiary of Roessler and Hasslacher Chemical Company, and submit same to new chief of Corporation Management Division.

June 9, 1919. Washington committee of sales, composed of five members from the legal staff and Corporation Management Division of the Alien Property Custodian's Office, met to consider order of

sale of Perth Amboy Chemical Works. After consultation order of sale disapproved and certain changes ordered made.

June 11, 1919. Mr. Crocker returns original demands with admissions of service thereon, and requests that order of sale be prepared similar in phraseology to the order of sale in Roessler and Hasslacher Chemical Company.

Audit of Perth Amboy Chemical Works by L. H. Conant and Company received. This audit was dated April 30, 1919.

Washington committee of sales meets and approves revised order of sale of Perth Amboy Chemical Works.

June 12, 1919. Two copies of order of sale forwarded to Mr. F. X. Anglim, of New York office of the Alien Property Custodian, with request that he fill in all blanks and send same to printer without alterations, unless same are first discussed with this office.

June 13, 1919. Receipt of supplemental stock demands with acceptance thereon acknowledged.

June 18, 1919. Mr. Joseph F. Guffey, director of Bureau of Sales, acknowledges receipt of orders of sale and refers same to Mr. Ripy, of that office, for action.

June 19, 1919. Mr. Guffey advises that July 1, 1919, is the date set for the sale of the Perth Amboy Chemical Works and that copies of prospectus will be forwarded to the Washington office as soon as is received by the New York office.

June 23, 1919. Letter requesting copies of prospectus sent to New York office.

June 24, 1919. The National Electrolytic Company, Niagara Falls, New York, advises that they desire to make an inspection of the Perth Amboy Chemical Works with a view to entering a bid, and requests information as to the terms and conditions of inspection and sale. Alien Property Custodian requested to wire as to the time at which inspection could be made.

108 June 26, 1919. Mr. Guffey's letter of June 25th, postponing the sale of Perth Amboy Chemical Works until July 10th, acknowledged.

New York office acknowledges letter of The National Electrolytic Company and calls attention to the postponement of the sale to July 10th. Encloses prospectus.

July 10, 1919. Mr. Guffey advises of further postponement of sale until July 18th.

July 14, 1919. Letter from Columbia Trust Company advising of exchange of certificate heretofore held by them for Certificate No. 26 for 1,940 shares capital stock Perth Amboy Chemical Works, registered in name of Francis P. Garvan, as Alien Property Custodian, Trust No. 12055.

July 16, 1919. Copy of report of Emery, Varney, Blair, and Hoguet on patents and trade-marks involved in Perth Amboy Chemical Company addressed to Mr. Crocker forwarded to Washington office, Alien Property Custodian.

July 18, 1919. Mr. Joseph F. Guffey, Director of Bureau of Sales, notifies Mr. Francis P. Garvan, Alien Property Custodian, of sale of 1,940 shares of the capital stock of Perth Amboy Chemical Works on July 18th, to Coffin and Company, 44 Pine Street, New York, American Aniline Products, Inc., 80 Fifth Avenue, New York, and asso-

ciates, as highest bidders, subject to approval by the sales committee as to price paid and American citizenship of purchasers.

Mr. Benjamin H. Griswold, c/o Mr. Alexander Brown and Company, Baltimore, Maryland, advised in detail of sale.

Mr. Cleveland H. Dodge, 99 John Street, New York City, advised of sale.

Honorable George L. Ingraham, 14 Wall Street, New York City, notified of sale.

Mr. Ralph Stone, Detroit Trust Company, Detroit, Michigan, advised of the sale, and also Mr. Otto T. Bannard, 26 Broad Street, New York City.

July 30, 1919. Alien Property Custodian, Bureau of Investigation, forwarded to Mr. Crocker, in New York, certain reports on Perth Amboy Chemical Works. The information in these reports was compiled from the files of the Alien Property Custodian, Department of Justice, State Department, Military Intelligence, and War Trade Intelligence.

August 19, 1919. Duplicate bills of Messrs. Wolfe, consulting actuaries, forwarded to Mr. Crocker.

August 22, 1919. Mr. Samuel E. Eveland, West End Trust Building, Philadelphia, Pennsylvania, requests information as to sale of refractories plant at Perth Amboy, New Jersey.

August 27, 1919. Letter to Mr. Crocker, requesting copies of minutes of all meetings of the board of directors or stockholders of the Perth Amboy Chemical Works not already on file in the office of the Alien Property Custodian, together with certified copies of the articles of incorporation from the office of the Secretary of State under seal of his office and a certified copy of the by-laws signed in ink by the secretary of the corporation, with the seal of the corporation thereon.

109 August 27, 1919. Mr. Crocker writes advising that there are no available funds for the payment of the bill of Messrs. Wolfe, but states that the matter will be discussed with Mr. Garvan.

August 28, 1919. Mr. Eveland advised of sale of Perth Amboy *Chemical Works stock, and informed that if it is found necessary to* reject this offer, the property will again be offered for sale and Mr. Eveland given full information concerning same.

September 2, 1919. Perth Amboy Chemical Works notifies Mr. Garvan of annual meeting of stockholders of that corporation to be held October 14, 1919.

September 9, 1919. Lee J. Wolfe writes Mr. Dunbar, assistant general counsel for the Alien Property Custodian, requesting that payment be made to him for services and expenses incurred in connection with the Perth Amboy Chemical Works.

September 15, 1919. Mr. Guffey, director of bureau of sales, requested to consult with Mr. Crocker, in re the payment of bill presented by Messrs. Wolfe.

September 16, 1919. Mr. Crocker forwards minutes of meetings of the Perth Amboy Chemical Works, bylaws, and certificate of incorporation, all certified to as requested under date of August 27th.

September 18, 1919. Above enclosures acknowledged, and attention called to the fact that minutes of meeting of stockholders, held October 14, 1918, were not included and same were requested.

September 20, 1919. Perth Amboy Chemical Works advises Mr. Crocker that there has been no meeting of the stockholders since the installation of the directors representing the Alien Property Custodian. The meeting of October 14, 1918, was held just prior to the installation of said directors.

September 23, 1919. Mr. Crocker forwards above letter to Washington office of Alien Property Custodian.

September 26, 1919. Mr. Crocker requested to have Mr. Rigney furnish copy of minutes of stockholders' meeting above referred to.

September 29, 1919. Bill approved and check drawn and forwarded to Messrs. Haskins and Sells for accounting services in connection with the Perth Amboy Chemical Works.

October 7, 1919. Regular bimonthly meeting of the board of directors of the Perth Amboy Chemical Works held at office of the company. Acting treasurer instructed to pay dividend of 40% out of earnings of 1918 to stockholders of record in the course of the current month.

October, 8, 1919. Letter from Mr. Crocker enclosing copy of minutes of stockholders' meeting held October 14, 1918.

October 10, 1919. Attention of Mr. Crocker called to resolution passed at directors' meeting of October 7th, declaring a dividend of 40% and also calling attention to the fact that paragraph 13 of the terms and conditions of sale provides that no dividends will be declared on stock of this corporation between the date of
110 this order and the delivery of the shares offered for sale. Our general counsel suggests that this matter be brought to the attention of the advisory committee as at their last meeting they approved the adequacy of price in this sale, and if dividends are to stand, the purchaser would have claim under section 9 for the return of these dividends.

October 10, 1919. Mr. Warren forwards copy of Minutes of the last meeting of the board of directors.

October 11, 1919. Acknowledgment of receipt of certified copy of minutes of meeting of stockholders on October 14, 1918.

October 14, 1919. Minutes of meeting held October 7th acknowledged.

Meeting board of directors. Acting treasurer reports that the dividend of 40 percent for the year 1918 had been paid.

Annual meeting of stockholders. Directors elected for ensuing year. Acts and resolutions of board of directors and acts and proceedings of officers of company for year closing approved, ratified, and adopted.

Meeting board of directors.

October 15, 1919. Mr. Crocker advises that paragraph 13 of the order of sale was ill-advised, but for some reason had been allowed to stand. In Mr. Crocker's opinion there is no question that the purchaser is entitled to these dividends and the matter will be brought to the attention of the advisory committee.

October 16, 1919. Above letter acknowledged.

Mr. Warren forwards certified copies of minutes of two meetings of the board of directors and certified copy of minutes of annual meeting of stockholders held October 14, 1919.

October 19, 1919. Above minutes acknowledged.

November 25, 1919. New York Bureau of Sales notifies the Alien Property Custodian of the sale of Perth Amboy Chemical Works to Coffin and Company for $940,800 on July 18th, and states that the advisory committee has approved the sale as to purchase price and citizenship of the purchasers and asks the Custodian's approval.

November 26, 1919. Acceptance of the bid of Coffin and Company for certain shares of stock of Perth Amboy Chemical Works mailed direct to purchaser and certification of this fact forwarded to Mr. George P. Wagner.

December 2, 1919. Columbia Trust Company authorized to deliver to the order of Mr. Guffey, Director of Bureau of Sales, Alien Property Custodian, or to Mr. Anglim, Assistant Director of Bureau of Sales, 1,940 shares of Perth Amboy Chemical Works, and given instructions with respect to their charges and the filing of their report to the Alien Property Custodian.

Minutes of meeting of board of directors received.

December 3, 1919. Mr. Warren requested to present his
111 resignation as director of Perth Amboy Chemical Works to the Director of Bureau of Sales so that delivery may be made to purchaser at the proper time. Mr. Warren is to continue to serve until the election of his successor.

December 3, 1919. Similar letter to Mr. Schenck.

Forwarded to Mr. George P. Wagner, under this date, stock power covering transfer of stock of Perth Amboy and letters addressed to the Bank of the Manhattan Company and the Columbia Trust Company, signed by the Director of the Bureau of Sales, authorizing delivery of the stock to the order of Joseph F. Guffey, or to Francis X. Anglim, acceptances of bid signed by the Custodian having been mailed direct to the purchaser, Coffin and Company, on November 26th.

December 4, 1919. American Aniline Products, Inc., associate with highest bidder, Coffin and Company, notified of acceptance of bid.

Copy of above-mentioned letter mailed to Joseph F. Guffey, Director of Bureau of Sales.

December 5, 1919. Letter from Mr. Warren enclosing resignation as a member of the board of directors of Perth Amboy Chemical Works.

Letter from Mr. Schenck enclosing resignation as a member of the board of directors of Perth Amboy Chemical Works.

December 8, 1919. Mr. Warren forwards copy of minutes of meeting of board of directors, Perth Amboy Chemical Works held on December 2nd. (Referred to Mr. John Wilson Brown for consideration.)

December 10, 1919. Above-mentioned minutes acknowledged.

December 11, 1919. Resignation of Mr. Schenck as director of Perth Amboy Chemical Works acknowledged.

Resignation of Mr. Warren as director of Perth Amboy Chemical Works acknowledged. Both Mr. Schenck and Mr. Warren are to serve until the election of successors.

January 6, 1920. Special meeting of board of directors Perth Amboy Chemical Works.

February 3, 1920. Regular bimonthly meeting of board of directors of Perth Amboy Chemical Works.

February 5, 1920. Mr. Warren forwards copy of minutes of above meeting.

February 9, 1920. Receipt of above-mentioned minutes acknowledged.

April 6, 1920. Regular bimonthly meeting of board of directors.

April 9, 1920. Copy of above minutes forwarded. Referred to Mr. Wilson Brown for consideration.

June 1, 1920. Regular bimonthly meeting of board of di-
112 rectors. June 26, 1920. Letter to the secretary of Perth Amboy Chemical Works, listing the certified copies of minutes on file in the office of the Alien Property Custodian and requesting copies of all missing minutes, if any.

June 30, 1920. Secretary of Perth Amboy Chemical Works writes that all minutes are on file with the Alien Property Custodian with the exception of those for meeting held June 1, 1920, which are awaiting approval of board at the next meeting.

July 6, 1920. Special meeting of board of directors of Perth Amboy Chemical Works.

July 14, 1920. Copies of minutes of meetings held June 1st and July 6th received from Mr. Warren and referred to Mr. Brown for consideration.

July 14, 1920. Letter from Lee J. Wolfe citing tax situation with respect to the Perth Amboy Chemical Works and stating that to intelligently make a report on this matter, he would have to come to Washington and consult the Government returns. So far he has been unable to get permission to do this and Mr. Wolfe requests that Mr. Garvan again ask the Treasury Department to give him access to these files.

July 19, 1920. Minutes of the meeting of board of directors held July 14th acknowledged.

July 22, 1920. Special meeting of board of directors of Perth Amboy Chemical Works.

August 3, 1920. Regular bimonthly meeting of board of directors.

August 5, 1920. Minutes of meeting of board of directors held July 22nd received and referred to Mr. Brown for consideration.

October 5, 1920. Regular bimonthly meeting of board of directors. Resolution passed directing treasurer to disburse the dividend of 75% payable out of earnings of the year 1919, one third thereof to be paid in Liberty bonds owned by the company.

October 19, 1920. Letter from the treasurer of Perth Amboy Chemical Works calling attention to the 75% dividend, payable out of profits of year 1919 to stockholders of record as of December 31, 1919, 50% in cash and 25% in Liberty bonds, and advising that, in accordance with such resolution, $98,000 had been paid to the Columbia Trust Company, being the cash dividend, and $49,000 in Liberty bonds now being converted by the Treasury Department to be delivered to the Columbia Trust Company later.

October 22, 1920. Above letter acknowledged.

December 7, 1920. Regular bimonthly meeting of board of directors.

December 29, 1920. Bill approved and check drawn and forwarded to Messrs. Haskins and Sells for accounting services in connection with the Perth Amboy Chemical Works.

January 10, 1921. Letter from Mr. A. W. Anthony enclosing list of debits in connection with Perth Amboy Chemical Works. This matter has been discussed with Mr. Anthony over the telephone.

113 February 1, 1921. Regular bimonthly meeting of board of directors.

February 4, 1921. Check drawn and forwarded to Director of Bureau of Sales, New York, in reimbursement of the expenses of the sale of Perth Amboy Chemical Works.

February 5, 1921. Copies of minutes of directors' meetings held October 5th and December 7th, 1920, forwarded to Alien Property Custodian.

February 9, 1921. Above-mentioned minutes acknowledged.

At a conference between the purchasers of the Perth Amboy Chemical Works and the Alien Property Custodian the sale previously made in this company was set aside principally on account of large income tax unpaid and other liabilities not listed in order of sale.

February 17, 1921. Agreement executed February 9, 1921, between the Alien Property Custodian and Bernard R. Armour and the American Aniline Products, Inc., the highest bidders at the auction conducted on contemplation of sale of the enemy interests in the above case forwarded to Mr. Crocker.

February 26, 1921. Letter from Mr. George P. Wagner enclosing withdrawal letter signed by Mr. Caton, as director of Bureau of Trusts, addressed to the Columbia Trust Company, dated December 2, 1919, also stock power which was signed by the Custodian on December 3, 1919. Inasmuch as the sale will not be consummated, Mr. Wagner advises that he has destroyed the stock power by cutting out the Custodian's signature.

April 4, 1921. Mr. Warren requested to forward copy of minutes of annual stockholders' meeting which should have been held on the second Monday in October.

April 5, 1921. Regular meeting of board of directors. Resolved that a dividend fund in the amount of 60% on the outstanding capital stock of the company (payable only after additional taxes assessed by the United States Government for the years 1917, 1918, and 1919 have been paid or satisfactorily adjusted) be created.

April 6, 1921. Mr. Warren advises that the stockholders' meeting scheduled for the second Monday in October had not been held.

April 7, 1921. Above letter acknowledged.

June 7, 1921. Regular bimonthly meeting of board of directors.

July 11, 1921. Mr. Warren forwards copies of minutes of the February 1st and April 5th meetings of the board of directors of the Perth Amboy Chemical Works.

July 12, 1921. Above copies of minutes acknowledged.

August 2, 1921. Regular bimonthly meeting of board of directors.

August 18, 1921. Copy of minutes of meeting of board of
114 directors Perth Amboy Chemical Works held July 7, 1921, forwarded by Mr. Warren.

August 25, 1921. Letter to Mr. Warren acknowledging receipt of copy of minutes of meeting of board of directors of Perth Amboy Chemical Works held June 7th.

October 3, 1921. Eighty shares of Perth Amboy Chemical Works stock surrendered under voting trust agreement to be held for a period of five years.

October 4, 1921. Regular bimonthly meeting of board of directors.

November 3, 1921. Letter to Mr. Schenck requesting that he file with the Alien Property Custodian his resignation as director of the Perth Amboy Chemical Works, as an agreement has been executed between the Alien Property Custodian and certain other stockholders of the Roessler and Hasslacher Chemical Company whereby a majority of the outstanding shares will be placed in a voting trust for period of five years, thus altering the situation.

Similar letter to Mr. Warren.

November 9, 1921. Resignation of Mr. Warren as director on board of Perth Amboy Chemical Works received.

November 9, 1921. Mr. Schenck's resignation received.

November 16, 1921. Resignation of Mr. Warren acknowledged.

Mr. Schenck's resignation as director acknowledged.

December 6, 1921. Regular bimonthly meeting of board of directors of Perth Amboy Chemical Works.

February 22, 1922. Regular bimonthly meeting of board of directors.

April 4, 1922. Regular bimonthly meeting of board of directors.

June 22, 1922. Regular bimonthly meeting of board of directors.

August 1, 1922. Regular bimonthly meeting of board of directors.

September 6, 1922. Regular bimonthly meeting of board of directors.

Special meeting of board of directors.

October 3, 1922. Special meeting of board of directors.

October 5, 1922. Extensive report from corporation management division to Colonel Miller, referring especially to the Perth Amboy Chemical Works sale and the agreement to set aside said sale.

October 9, 1922. Board of directors' meeting.

115 October 9, 1922. Annual meeting of stockholders of Perth Amboy Chemical Works. Messrs. Schenck and Warren re-elected as directors for the ensuing year.

October 11, 1922. Special meeting of board of directors.

November 23, 1922. Notice received of special meeting of the board of directors of Perth Amboy Chemical Works to be held November 24, 1922, for the purpose of arranging for the increase of the capital stock of the company from 4,000 shares at a par value of $100 each to 10,000 shares at a par value of $100 each.

November 24, 1922. Special meeting of board of directors. Certificate of Incorporation amended to increase authorized capital stock to $1,000,000 divided into 10,000 shares of a par value of $100.

November 29, 1922. Notice received of special stockholders' meeting to be held December 6, 1922, for the purpose of taking action on resolution passed by the board of directors providing for increase in capital stock of Perth Amboy Chemical Works.

December 1, 1922. Alien Property Custodian was consulted as to the form of proxy to be signed for the special stockholders' meeting to increase dividends. The question was also discussed as to whether the new stock received should be deposited under the voting trust or not.

December 4, 1922. Colonel Miller wires Mr. Robert H. Neilson and writes enclosing proxy for special meeting of stockholders to be held December 6th.

December 5, 1922. Regular bimonthly meeting of board of directors. Dividend of $50 a share declared payable December 7, 1922.

December 6, 1922. Notice from assistant treasurer, Perth Amboy Chemical Works, of above meeting and enclosing check representing $50.00 per share dividend declared at said meeting.

December 8, 1922. Letter to secretary of Perth Amboy Chemical Works requesting copies of all meetings of directors and stockholders not already on file with the Alien Property Custodian.

December 9, 1922. Mr. Paul D. Cravath writes Colonel Miller, Alien Property Custodian, in re the fee to be paid to the firm of Crocker, Johnson, and Shores as counsel for the Perth Amboy Chemical Works and Roessler and Hasslacher Chemical Company. Mr. Cravath refers to various conferences had from time to time on this subject and writes, as attorney for the enemy owners of the stock in this company, that he approves a fee from $25,000 to $30,000 as "very moderate considering the long period covered by the services in question."

December 15, 1922. Letter written to the Attorney General asking this official's opinion as to a fair compensation to be paid to Messrs. Crocker, Johnson and Shores for their services in connection with Perth Amboy Chemical Works, Roessler and Hasslacher Chemical Company, and Niagara Electro Chemical Company. The Attorney General writes that after a personal conference with the Alien Property Custodian in which this matter was discussed that he is
116 inclined to think the fee mentioned in Mr. Cravath's letter "to be reasonable for the services rendered and considering the amount involved." The Attorney General pointed out, however, that the Government is acting as a trustee in this matter and that he believed compensation should be in proportion to that received by a capable Government attorney, making allowances for overhead and expenses of assistants. The Attorney General further states, "considering all these matters and this theory, I would suggest that you undertake to compromise this fee for $20,000."

January 30, 1923. Letter to secretary of Perth Amboy Chemical Works again requesting copies of minutes.

February 6, 1923. Regular bimonthly meeting of board of directors. Special dividend of $50 per share declared payable December 7th reported as paid.

Perth Amboy Chemical Works forwards copies of minutes as requested in our letter of December 8, 1922, and January 30, 1923.

February 9, 1923. Above copies of minutes acknowledged and copy of the certificate of increase of the capital stock, certified by the Secretary of State, requested.

February 17, 1923. At the request of Perth Amboy Chemical Works, Messrs. Gifford, Hobbs and Beard forward certified copy of the certificate of increase of the capital stock.

February 21, 1923. Copy of minutes of meeting held February 6, 1923 received.

April 3, 1923. Letter to Mr. Crocker, requesting copy of itemized bill for services.

April 6, 1923. Copy of minutes of above directors' meeting received.

April 9, 1923. Above minutes acknowledged.

May 1, 1923. Special meeting of board of directors. Treasurer reported that dividends declared at last meeting have been paid.

May 8, 1923. Perth Amboy Chemical Works forwards copies of minutes of above meeting.

May 9, 1923. Above minutes acknowledged.

June 5, 1923. Regular bimonthly meeting board of directors. Dividend of 4% declared payable July 1st.

August 7, 1923. Regular bimonthly meeting board of directors. Copies of minutes of bimonthly meeting board of directors held June 5th and August 7th received.

August 13, 1923. Above minutes acknowledged.

117 September 11, 1923. Special meeting board of directors. Special dividend of $8.00 per share and regular dividend of 4% declared payable to tsockholders of record as of September 30th during the first week of October.

September 24, 1923. Notice of annual meeting of stockholders, to be held October 8th, received.

October 8, 1923. Meeting board of directors.

Meeting board of directors. Extra dividend at $10.00 per share declared payable October 10, 1923, to stockholders of record on October 9th.

Annual meeting of stockholders. Resolved to recommend to the board of directors that an extra dividend at the rate of $10.00 per share be declared payable October 10th, 1923, to stockholders of record at the close of business on October 9th. Messrs. Schenck and Warren reelected directors for the ensuing year.

Meeting board of directors. Dividend, recommended at stockholders' meeting, declared payable October 10th.

October 11, 1923. Certified copies of minutes of special meeting, September 11, 1923, the two meetings of the board of directors and the annual stockholders' meeting on October 8, 1923, forwarded by the secretary of Perth Amboy Chemical Works.

October 15, 1923. Above minutes acknowledged.

November 8, 1923. Corporation Management Division prepares memo to Alien Property Custodian, Thomas W. Miller, reciting the history of the Custodian's seizure for the account of Trust 12055; the return of 80 shares under the voting trust agreement, the receipt of stock dividends making present holding 4,900 shares to be sold.

November 16, 1923. Letter from Irving Bank-Columbia Trust Company stating it is prepared to make an offer for Perth Amboy Chemical Works stock provided a satisfactory price can be agreed upon.

November 19, 1923. Referring further to their letter of November 16th, Irving Bank-Columbia Trust Company advise they have filed with them power of attorney executed on APC Form MM-720 by Holzverkohlungs Industrie A. G., which can be submitted to the Alien Property Custodian for inspection at any time.

November 20, 1923. In reply to the two letters above, the Alien Property Custodian advises the Irving Bank-Columbia Trust Company that it is a fact that this office is liquidating property where a

sale can be consummated to the advantage of the United States as well as the enemy trust involved, and that a policy has been adopted of insisting on assents from the enemy to a proposed sale in order to protect the Government. In addition, the Alien Property Custodian also desires clearances from the enemy as to the acts of the present Custodian and his predecessors in the particular trust involved.

November 21, 1923. Irving Bank-Columbia Trust Company write they are prepared to bid $70.00 a share for Perth Amboy Chemical Works stock and that they have an agreement executed by Holzverkohlungs Industrie A. G.

November 22, 1923. Letter from Colonel Miller, Alien
118 Property Custodian, to Irving Bank-Columbia Trust Company advising that he is prepared to accept the offer as submitted in letter of November 21st and will be in New York on November 26th to negotiate the details of the transfer.

November 22, 1923. An Executive order, signed by the President of the United States as of this date, was received, authorizing the Alien Property Custodian, under certain conditions, to sell at private sale 4,900 shares of common stock of the Perth Amboy Chemical Works formerly belonging to Holzverkohlungs Industrie A.G. at a price of $70.00 a share.

November 26, 1923. Letter to Irving Bank-Columbia Trust Company, depositary, advising that 4,850 shares of Perth Amboy Chemical Works held in Trust No. 12055 in the name of Holzverkohlungs Industrie A.G. have been sold to an American syndicate, consisting wholly of Americans and an American corporation and delivery of said stock to Irving Bank-Columbia Trust Company to be made for the account of the purchasers.

Letter to Perth Amboy Chemical Works from Alien Property Custodian advising of sale of enemy owned stock of said company and directing that proper entries be made in their books and records and/or such further transfer of said stock as may be necessary to convey the title and ownership thereof to the Irving Bank-Columbia Trust Company.

November 27, 1923. Letter to Mr. Warren from Alien Property Custodian confirming conference of today relating to sale of stock of Perth Amboy Chemical Works and requesting that Mr. Warren obtain clearances covering the acts of A. Mitchell Palmer, as Alien Property Custodian, Francis P. Garvan, as Alien Property Custodian, Thomas W. Miller, as Alien Property Custodian, as well as the Treasurer of the United States and the President of the United States covering the administration of the affairs of all trust involved in these transactions.

November 28, 1923. Above letter acknowledged by Mr. Warren and he advises that the Perth Amboy Chemical Works stock was delivered on November 27th and the proceeds received and deposited, and every effort would be made to obtain from the former enemy clearances covering the acts of Colonel Miller, as Alien Property Custodian, the former Custodians, the Treasurer of the United States, and the President of the United States. He also confirms arrangements in regard to the deposit of the proceeds of sale, which are to

remain on deposit with the Irving Bank-Columbia Trust Company until February 28, 1924; with interest at the rate of 2½%.

November 28, 1923. Irving Bank-Columbia Trust Company reports delivery of 4,850 shares Perth Amboy Chemical Works to purchaser and receipt of $339,306 in payment therefor, which amount has been credited to Trust 12055, less New York State and Federal transfer tax. In accordance with arrangements made, these proceeds to be forwarded with quarterly statement for quarter ending February 28, 1924.

December 1, 1923. Claim under section 9 for the return of 1,960 shares of Perth Amboy Chemical Works, with all dividends received, filed by Holzverkohlungs Industrie Aktiengesellschaft, same being signed by a director and a manager of this corporation and acknowledged before the American consul at Stuttgart, Germany.

Power of attorney running to Messrs. Cravath, Henderson, and de Gersdorff, of New York, also received. Claim was docketed and given no. 21573.

December 4, 1923. Telegram from Mr. Warren requesting general release.

119 December 4, 1923. Alien Property Custodian writes Mr. Warren that he will be in New York on Friday to take up with him and with the Federal Reserve bank arrangements for the Federal Reserve bank to accept commercial paper as security for the cash deposit covering money held on account of sale of Perth Amboy Chemical Works. Twenty blank assents to sale sent to Mr. Warren for signature as per request.

December 5, 1923. Above blank assents acknowledged by Mr. Warren, who advises that he has been informed that the deposit for acceptable commercial paper with the Federal Reserve bank to secure funds left on deposit with the Irving Bank-Columbia Trust Company has been satisfactorily settled.

January 1, 1924. Perth Amboy Chemical Works merge with the Roessler and Hasslacher Chemical Company.

January 17, 1924. Letter received from Perth Amboy Chemical Works enclosing certificate no. 11 for twenty shares of stock in this company registered in the name of Heinrich von Hochstetter, also letters of October 10th and November 10, 1913, to the Perth Amboy Chemical Works. These letters relate, over the signature of the supposed owner, that the twenty shares held in his name belonged to Holzverkohlungs Industrie A. G.

January 22, 1924. The matter of the ownership of the twenty shares of Perth Amboy Chemical Works, held by this office in the name of Heinrich von Hochstetter, trust no. 12056, having been thoroughly investigated, it was decided that no beneficial ownership accrues to the said Heinrich von Hochstetter and, accordingly, the twenty shares of stock held in trust 12056 were transferred to the account of Holzverkohlungs Industrie A. G. trust 12055 and our depositary and the Treasury Department were so notified and the records of this office were changed to conform with this decision.

January 24, 1924. Mr. Warren advises that he is forwarding under separate cover, assent to sale of 4,850 shares Perth Amboy Chemical Works.

February 27, 1924. Letter from Irving Bank-Columbia Trust Company, advising that the proceeds of sale of the Perth Amboy Chemical Works will be forwarded, together with interest, on February 28th.

April 25, 1924. Audit completed on claim 21573 and same forwarded to the claims section for action.

Corporation management approves return of cash under claim 21573.

May 10, 1924. Claims section approves claim 21573 for the return of $10,000, the maximum allowed under the law existing at that time.

May 15, 1924. Managing director approves return of $10,000.00.

May 19, 1924. Formal request made on the Treasurer of the United States to forward to this office check for $9,900, payable to Cravath, Henderson, and de Gersdorff on behalf of said Holzverkohlungs Industrie A. G., under claim 21573.

May 26, 1924. General Accounting Office of the United
120 States Government enters into an audit of the books and records of the Alien Property Custodian's office in connection with the Perth Amboy Chemical Works and writes said company for a list of dividends, both stock and cash, paid since the seizure by the Alien Property Custodian.

June 3, 1924. Letter received from Perth Amboy Chemical Works giving desired information in re cash and stock dividends.

June 19, 1924. Messrs. Cravath, Henderson, and de Gersdorff notified that Claim No. 21573 had been allowed for the return of $10,000 and that check for this amount, less $100 administrative expense, had been received and would be forwarded to them upon the execution of certain releases.

July 2, 1924. Affidavit received from attorneys for Holzverkohlungs Industrie A. G., stating their fee would not exceed 3%.

July 11, 1924. Receipt of check for $9,900 acknowledged by Messrs. Cravath, Henderson, and de Gersdorff.

July 12, 1924. Letter received from Messrs. Cravath, Henderson, and de Gersdorff asking whether the return of $9,900 represented income upon which a return must be made to the Collector of Internal Revenue.

July 24, 1924, Messrs. Cravath, Henderson, and de Gersdorff notified that there would be no income tax for the year 1923 and that the Alien Property Custodian holds sufficient funds for the account of Holzverkohlungs Industrie A. G. to meet any levy for the year 1924 on property under control of the Alien Property Custodian.

July 29, 1924. Attorneys for this claimant write our tax section in re taxes on property held for the account of their client.

October 3, 1924. Letter received from Holzverkohlungs Industrie A. G., direct, enclosing power of attorney in favor of Roessler and Hasslacher Chemical Company of New York, with the statement that they wanted their income checks forwarded under this new power of attorney.

October 24, 1924. Income section asks Alien Property Custodian Bureau of Law for ruling on new power of attorney received from Holzverkohlungs Industrie A. G.

October 30, 1924. Bureau of Law rules that power of attorney is satisfactory and that income may be returned thereunder.

November 3, 1924. Check for $10,000 mailed to Roessler and Hasslacher Chemical Company as attorney for Holzverkohlungs Industrie A. G., this amount representing payment of interest for the year ending March 4, 1924, as provided under section 23 of the Trading with the Enemy Act.

June 2, 1925. Check for $10,000 drawn and forwarded to Roessler and Hasslacher Chemical Company for Holzverkohlungs Industrie A. G. This sum represented maximum payment under section 23 of the Trading with the Enemy Act for the year ending March 4, 1925.

121 September 24, 1925. Corporation Management Division prepares a digest of the summary of sales of the Perth Amboy Chemical Works stock for the attention of the Custodian. This memorandum closed by pointing out that the enemy ownership had been eliminated in this company.

April 22, 1926. The sum of $10,000 representing income under section 23 for the year ending March 4, 1926, sent to the attorneys for the claimant.

June 7, 1926. Statement of all cash received for the account of Holzverkohlungs Industrie A. G., including dividends and sale of stock, prepared and sent to Messrs. Cravath, Henderson, and de Gersdorff, of New York, at their request.

February 7, 1927. Proceeds of sale of fifty shares of capital stock of Perth Amboy Chemical Works originally held in Trust 12056 transferred to Trust 12055 in the name of Holzverkohlungs Industrie A. G.

July 8, 1927. Annual interest payment for the year ending March 1927 paid to the attorneys for the claimant. This amounted to $10,000, less administrative expense. Previous payments had been made without deductions.

October 27, 1927. Interest under section 23 now paid semiannually, and check for $5,000, less administrative expense, forwarded to attorneys for claimant. This covered a period from March to September 1927.

March 15, 1928. Semiannual payment of $5,000, less administrative expense, forwarded to attorneys for claimant and representing income for the six months ending March 15, 1928.

April 8, 1928. War Claim for the return of 80% of the balance of property still held in Trust 12055 for the account of Holzverkohlungs Industrie A. G. filed by attorneys for the claimant. This was entered on our dockets and given no. 851. A new power of attorney, dated April 3, 1928, running to Messrs. Cravath, Henderson, and de Gersdorff, filed on the same date.

July 30, 1928. Income-tax affidavit and tax power of attorney on behalf of Holzverkohlungs Industrie A. G. received and forwarded to our tax section.

August 1, 1928. War Claim 851 assigned to an attorney in claims section for consideration.

September 19, 1928. War claim forwarded to audit section for statement preparatory to return.

October 12, 1928. Audit completed and War Claim 851 forwarded to tax section for computation of any taxes due.

December 8, 1928. Computation of tax liability completed and checks drawn to pay income tax from both principal and income and war claim forwarded to claims section for disposition.

December 14, 1928. Corporation Management Division 122 states that they have no objection to the allowance of War Claim 851, except as to the proceeds received from the sale of patents to the Chemical Foundation.

Patent section of the Alien Property Custodian approves return under War Claims 851 of all property, except proceeds of sale of patents to the Chemical Foundation.

December 20, 1928. War Claim 851 recommended allowed by chief of claims section and managing director.

December 26, 1928. Formal allowance of War Claim 851 made by the Alien Property Custodian.

January 3, 1929. Check received from the Treasury Department for $524,223.79, the amount due as per audit of October 12, 1928.

January 17, 1929. Audit prepared for the return of all income in this trust following the allowance of War Claim 851.

January 21, 1929. Check for $303,101.94 drawn and forwarded to Messers. Cravath, Henderson, and de Gersdorff, attorneys for Holzverkohlungs Industrie A. G.

January 29, 1929. Liberty bonds and United States Treasury notes of an aggregate value of $25,000 forwarded to attorneys for this claimant.

June 10, 1929. Check for $9,473.77, representing Treasury interest from September 1928 to March 1929 forwarded to attorneys for the claimant.

January 10, 1930. Treasury interest up to September 15, 1929, amounting to $771.40, less administrative expense, forwarded to the attorneys for the claimant.

September 26, 1920. Check for $8.19, balance of Treasury interest to March 15, 1930, forwarded to attorneys for the claimant.

January 29, 1931. Formal request made that the 20% retained by this office under War Claim 851 from Trust 12055 in the name of Holzverkohlungs Industrie A. G. be transferred to Trust 12009, War Claim 608 in the name of Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

Extensive documents were filed to prove the consolidation of these two concerns. Translations from German submitted also. Letter forwarded to division of trusts for action.

February 6, 1931. Transfer of assets from Trust 12055 in the name of Holzverkohlungs Industrie A. G. to Trust 12009 in the name of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler approved and suitable entries made in the division of trusts.

February 9, 1931. Records of stocks and bonds section changed to show this consolidation.

February 12, 1931. Bookkeeping section shows this consolidation on their records.

123 February 12, 1931. Patents held in Trust 12055 transferred to Trust 12009.

February 25, 1931. United States Treasury official notified to transfer 20% retained under War Claim 851 in Trust 12055 to Trust 12009.

March 28, 1931. Letter received from attorneys for the claimant asking as to the progress made on the consolidation of these two trusts.

April 1, 1931. Attorneys for claimant notified that the consolidation of the two trusts and transfer of the property had been recommended and the work was in progress.

April 7, 1931. Mr. C. D. Bray, Director of Finance and Accounts, formally notifies the attorneys for Holzverkohlungs Industrie A. G. that the 20%, withheld from their account, had been transferred on all the records of this office and the Treasury Department to Trust 12009 in the name of the Deutsche Gold und Silber Scheideanstalt Vormals Roessler.

124 EXHIBIT "D"

Revenues and disbursements Alien Property Custodian

Period	Appropriations by Congress	Lapsed appropriations	Administrative charges	Expenditures	Balance
October 1917 to June 30, 1918	$495,000.00	$300.58		$494,609.42	
July 1, 1918 to June 30, 1919	1,015,000.00	16,804.73		998,195.27	
July 1, 1919 to June 30, 1920	800,000.00	64,147.70		735,852.30	
July 1, 1920 to June 30, 1921	455,000.00	4,804.59		450,195.41	
July 1, 1921 to June 30, 1922	375,000.00	5,921.32	$11,295.59	385,238.80	$4,864.53
July 1, 1922 to June 30, 1923	370,000.00	47,908.46	62,498.56	370,993.42	8,762.15
July 1, 1923 to June 30, 1924	281,200.00	180.51	201,522.75	423,824.20	67,480.19
July 1, 1924 to June 30, 1925	225,000.00	21,833.43	177,224.99	425,904.95	21,966.80
July 1, 1925 to June 30, 1926	189,220.00	20,508.14	456,474.37	596,086.87	51,066.16
July 1, 1926 to June 30, 1927	130,650.00	3,583.53	479,061.29	497,569.12	159,624.80
July 1, 1927 to June 30, 1928	98,000.00	64,051.18	405,222.15	455,900.49	142,895.28
July 1, 1928 to June 30, 1929			2,729,066.10	457,463.37	2,414,498.01
July 1, 1929 to June 30, 1930			1,693,040.41	475,173.69	3,632,364.73
July 1, 1930 to June 30, 1931			930,958.27	433,228.04	4,130,094.96
Total	4,434,070.00	250,134.17	7,146,364.48	7,200,205.35	4,130,094.96

Proof of balance

Balance as shown above	$4,130,094.96
Accrued revenue and reserves	19,226.04
	4,149,321.00
Cash in bank	282,947.67
Cash in Treasury	3,825,973.33
Petty cash	1,300.00
Accrued interest	39,100.00
	4,149,321.00
Total appropriated money expended	4,183,935.83

125 *Notice of hearing of the motion to dismiss and points of law contained in the answer to the amended bill of complaint*

Filed December 8, 1932

To RICHARD H. WILMER, Esq., and DOUGLAS L. HATCH, Esq.,
Attorneys for the Plaintiff,
Transportation Building, Washington, D. C.

GENTLEMEN: Please take notice that upon the amended bill of complaint and the motion to dismiss contained in paragraphs I to VI, inclusive, of the answer of the defendants to said amended bill of complaint and upon paragraphs 17, 18, 19, and 24 of said answer to said amended bill of complaint the defendants will apply to the motions justice of the Supreme Court of the District of Columbia at a term for motions to be held on Wednesday, December 14, 1932, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, for a decree dismissing said amended bill of complaint, with costs, and for such other and further relief in the premises as may be just and proper.

LEO A. ROVER,
United States Attorney.
ROY ST. LEWIS,
Assistant Attorney General,
THOMAS E. RHODES,
Special Assistant to the Attorney General,
PHILIP H. MARCUM,
Special Attorney in Alien Property Matters,
Attorneys for the Defendants.

126 An oral hearing of the foregoing matter is respectfully requested. In my judgment it will take at least one hour to present the oral arguments on this case.

THOMAS E. RHODES,
Attorney for the Defendants.

Tel. No. Nat'l 0185, Br. 301, Tower Building, Department of Justice, Washington, D.C.

Service of the foregoing notice, together with the brief in support thereof, acknowledged this 8th day of December 1932.

RICHARD H. WILMER,
DOUGLAS L. HATCH,
Attorneys for the Plaintiff.

Order

Filed March 29, 1933

This cause came on to be heard at this term upon the amended bill of complaint and the motion to dismiss filed by the defendants; and thereupon, upon consideration thereof, it is by the Court this the 29th day of March 1933.

Adjudged, ordered, and decreed that said motion to dismiss be and the same hereby is overruled without prejudice and reserving to the defenants the benefit thereof at the final hearing.

O. R. LUHRING, *Justice.*

127 *Order allowing special appeal*

Filed April 24, 1933

Court of Appeals of the District of Columbia

No. 2092 Original. April Term, 1933

Equity No. 52733

HOWARD SUTHERLAND, INDIVIDUALLY AND AS ALIEN PROPERTY CUSTODIAN, and Walter O Woods, Individually and as Treasurer of the United States, petitioners

vs.

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT VORMALS ROESSLER, A Corporation, Frankfort, a/M, Germany

On consideration of the petition for the allowance of a special appeal in the above-entitled cause from the order of the Supreme Court of the District of Columbia entered therein on March 29, 1933,

It is by this court this day ordered that a special appeal in this cause be and it hereby is allowed as prayed.

Per Mr. Chief Justice MARTIN.

April 21, 1933.
A true copy.
Teste:
[SEAL]

HENRY W. HODGES,
Clerk, Court of Appeals, D.C.

128 *Assignment of errors*

Filed May 2, 1933

Now come the defendants and make the following assignment of errors in the above-entitled cause:

1. The court erred in overruling the defendants' motion to dismiss the plaintiff's amended bill of complaint.

2. The court erred in not entering a final decree dismissing the plaintiff's amended bill of complaint.

3. The court erred in overruling the motion to dismiss the plaintiff's amended bill of complaint as against the defendants, Howard Sutherland, individually, and Walter O. Woods, individually.

4. The court erred in not entering a decree dismissing the plaintiff's amended bill of complaint as against the defendants, Howard Sutherland, individually, and Walter O. Woods, individually.

5. The court erred in not entering a final decree dismissing the amended bill of complaint on the ground that the administrative charges claimed therein were legally deducted by the Alien Property Custodian for administrative expenses from the seized property and income of the plaintiff.

6. The court erred in not entering a final decree dismissing the amended bill of complaint on the ground that the action of the Alien Property Custodian in determining and deducting the flat-rate charges claimed in said amended bill of complaint, was the exercise of a power, discretionary in character, which the court may not review.

7. The court erred in not entering a final decree dismissing
129 the plaintiff's amended bill of complaint on the ground that said plaintiff was precluded and barred from prosecuting and maintaining this suit by virtue of the Treaty of Berlin concluded by and between the United States and Germany on August 25, 1921.

THOMAS E. RHODES,
Special Assistant to the Attorney General,
Attorney for the Defendants.

Receipt of a copy of the foregoing assignment of errors acknowledged this 29th day of April 1933.

RICHARD H. WILMER,
DOUGLAS L. HATCH,
Attorneys for the Plaintiff.

Designation of record

Filed May 2, 1933

The clerk will please prepare the record on appeal in the above-entitled cause and include therein the following papers and proceedings:

1. Bill of complaint filed April 15, 1931.
2. Amendments to bill of complaint filed June 7, 1932.
3. Answer to the amended bill of complaint, together with exhibits "A", "B", "C", and "D", attached thereto, filed September 30, 1932.
4. Notice of hearing of the motion to dismiss and points of law contained in the answer to the amended bill of complaint filed December 8, 1932.
5. Order overruling motion to dismiss filed March 29, 1933.
130 6. Order of Court of Appeals allowing special appeal entered April 21, 1933, filed in this court April 24, 1933.
7. Assignment of errors.
8. This designation of record.

THOMAS E. RHODES,
Special Assistant to the Attorney General,
Attorney for the Defendants.

Receipt of a copy of the foregoing designation of record acknowledged this 29th day of April, 1933.

RICHARD H. WILMER,
DOUGLAS L. HATCH,
Attorneys for the Plaintiff.

131 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 130, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 52733 in Equity, wherein Deutsche Gold und Silber Scheideanstalt Vormals Roessler, a corporation, Frankfurt a/Main, Germany, is plaintiff, and Howard Sutherland, individually and as Alien Property Custodian of the United States, and Walter O. Woods, individually and as Treasurer of the United States, are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 13th day of May, 1933.

[SEAL.] FRANK E. CUNNINGHAM, *Clerk*.

[Endorsement:] District of Columbia Supreme Court. No. 5963. Howard Sutherland, Individually &c., et al., appellants, vs. Deutsche Gold und Silber Scheideanstalt Vormals Roessler, a Corporation. Court of Appeals, District of Columbia. Filed May 13, 1933. Henry W. Hodges, clerk.

U. S. GOVERNMENT PRINTING OFFICE, 1933

Order allowing certiorari

Filed March 19, 1934

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. —

UREY WOODSON, AS ALIEN PROPERTY CUSTODIAN of the United States, and W. A. Julian, as Treasurer of the United States, petitioners

v.

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT Vormals Roessler, a Corporation, Frankfurt a/Main, Germany

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of Urey Woodson, Alien Property Custodian, and W. A. Julian, Treasurer of the United States, prays that a writ of certiorari issue to review the decree of the Court of Appeals of the District of Columbia, entered in the above case on November 20, 1933, affirming a decree of the Supreme Court of the District of Columbia, denying the petitioners' motion to dismiss the bill of complaint.

OPINIONS BELOW

The Supreme Court of the District of Columbia rendered no opinion. The opinion of the Court of Appeals is not officially reported but may be found

in the Washington Law Reporter, Volume LXI, p. 896.

JURISDICTION.

The decree of the court below was entered November 20, 1933. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Alien Property Custodian had authority under the applicable statutes to deduct from the property of enemy aliens, seized by him pursuant to the Trading with the Enemy Act, certain percentages for the purpose of paying the overhead or administrative expenses of his office.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra*, p. 15.

STATEMENT

The respondent brought a bill in equity against the petitioners' predecessors in office in the Supreme Court of the District of Columbia under the Trading with the Enemy Act and the several amendments thereto. The bill of complaint (R. 1–8), as amended (R. 9–13), alleged substantially the following facts:

The respondent is a corporation organized and existing under the laws of Germany. (R. 1.) At the time of the entry of the United States into the late war the respondent owned certain property in the United States, including a large number of shares

of stock of three American corporations. (R. 2.) At that time also Holzverkohlungs Industrie Aktiengesellschaft, likewise a German corporation, owned certain property in this country, including shares of stock in an American corporation. (R. 2.) Pursuant to the provisions of the Trading with the Enemy Act, the Alien Property Custodian seized on the books of the various domestic corporations all of the right, title and interest of the respondent and Holzverkohlungs Industrie Aktiengesellschaft in and to the stock mentioned above, as well as other property, and since the date of such seizure has managed and administered the property so seized, together with the proceeds and earnings thereof and additions and accretions thereto, under the provisions of the Trading with the Enemy Act as from time to time amended. (R. 2.)

On or about July 16, 1930, Holzverkohlungs Industrie Aktiengesellschaft was, pursuant to the provisions of German law, merged with the respondent, and following such merger all property held by the Alien Property Custodian in the name of Holzverkohlungs Industrie Aktiengesellschaft was duly transferred on the Custodian's books to the account of the respondent. (R. 2.)

Subsequent to the enactment of the Winslow Act of March 4, 1923, each corporation filed a notice of claim with the Alien Property Custodian and obtained the release of $10,000 principal and income on the remaining property at not exceeding $10,000 per annum. (R. 9.)

After the enactment of the Settlement of War Claims Act of March 10, 1928, the two corporations likewise filed claims under that Act and received 80 percent of the property still held by the Custodian less amounts reserved for income taxes tentatively determined and certain other deductions hereinafter mentioned. (R. 3.)

Prior to the allowance of the claims under the Winslow Act, the Alien Property Custodian had deducted from the property of the two corporations certain amounts to cover fees, costs and commissions alleged to be due to depositaries or other persons for the costs and expenses of collecting, securing and safeguarding the property of the two claimants. (R. 9.) These sums are not involved in the present suit. (R. 9.)

Whenever the Alien Property Custodian released principal or income to either of the corporations under the Winslow Act, he deducted from the money to be released an amount equal to 1 percent on claims allowed and paid during the years 1924 to 1927, inclusive, and 2 percent on claims allowed and paid in 1928. (R. 9, 10.) The amount so withheld aggregated $1,400. (R. 10.)

Whenever the Custodian released any property under the Settlement of War Claims Act, he withheld an amount equal to 2 percent of the sums thus released. (R. 10.) These amounts, which were deducted at various times during the years 1929 to 1931, inclusive, aggregated $60,346.52. (R. 10.) The Custodian also, when crediting the aliens with

interest earned on moneys deposited in the Treasury, deducted 1 percent in respect of interest so earned during the years 1923 to 1927, inclusive, and 2 percent in respect of interest earned in later years. (R. 11.) These amounts aggregated $8,142.31. (R. 11.)

The amounts deducted from principal and income released under the Winslow Act and the Settlement of War Claims Act represented charges for administrative expenses and were deposited by the Custodian either in a special account maintained at the Commercial National Bank of Washington, D.C., or in a special account maintained in the United States Treasury for the credit of the Alien Property Custodian. (R. 12.) Out of said funds the Custodian has at various times withdrawn and is continuing to withdraw money for paying the administrative expenses of his own office and for paying to American, neutral and allied nationals sums due them under the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379.[1] (R. 4, 5.) The deductions from Treasury interest have not, to the respondent's knowledge, been given any designation except possibly that of "commission." (R. 12.)

The aggregate of the funds on deposit in the special accounts in the Commercial National Bank and the Treasury was, on December 31, 1930, $4,143,573.27. (R. 5.) This balance is less than

[1] It was held in that case that the Custodian was not entitled to make deductions for administrative expenses from property seized in the mistaken belief that it was the property of enemy aliens, but which in fact belonged to non-enemies.

the aggregate of the amounts deducted and withheld by the Custodian upon the property of all claimants whose claims have been allowed and is insufficient to pay in full all claimants, including the respondent, whose money has been paid into said accounts. (R. 5.) The petitioners do not have available any other funds which could lawfully be used to make up the deficiency in the event it should ultimately be held that the deduction of administration expenses was unauthorized and that the several claimants are entitled to have the money refunded. (R. 5.)

The Alien Property Custodian has not furnished any statement to the respondent showing what, if any, portion of the amounts thus withheld was necessary for securing, protecting or administering the property of the respondent and Holzverkohlungs Industrie Aktiengesellschaft, respectively, and what were the number of hours of work spent by and the rate of compensation paid to those employees of the Custodian who performed any such necessary services. (R. 6, 12.) The Custodian has kept no records showing what portion of said amounts withheld is properly allocable to the expense of administering the property of the two claimants. (R. 6–7, 12.)

The respondent asked that the petitioners be required to account for all sums withheld on account of administrative expenses and to refund $69,888.83 or such greater amount as might be found due. (R. 12.) It also asked the court to declare the existence of a lien in its favor on the special accounts men-

tioned above, to enjoin the petitioners from making payments out of said funds to anyone but the respondent, and, if deemed advisable, to appoint a receiver to take charge of the funds. (R. 8, 13.)

The petitioners filed an answer to the amended bill of complaint and also moved that the bill be dismissed as insufficient in law. (R. 14–26.) The Supreme Court of the District of Columbia overruled said motion without prejudice (R. 101), and a special appeal was taken to the Court of Appeals, which affirmed the decree of the lower court.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Alien Property Custodian was without authority to deduct and withhold from the property held by him in the name of the respondent and Holzverkohlungs Industrie Aktiengesellschaft amounts computed on a percentage basis as a charge for the expense of administering such property.

2. In holding that the Alien Property Custodian had authority to deduct and withhold from the property held by him as aforesaid only the actual cost or expense incurred in administering said property.

3. In holding that the Alien Property Custodian must account to the respondent in detail for the expense of administering said property, showing what part of the amounts deducted and withheld represented the cost of such administration.

4. In holding that the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379, requires the conclusion that the Alien Property Custodian was without authority to make deductions on a percentage basis as aforesaid in respect of property owned by enemy aliens at the time of seizure.

5. In affirming the decree of the Supreme Court of the District of Columbia, denying the motion to dismiss the bill of complaint.

REASONS FOR GRANTING THE WRIT

1. The court below held that the Alien Property Custodian was without authority under the applicable statutes to deduct from property in his hands a charge computed on a flat percentage basis for the overhead or administrative expenses of his office. The question thus decided is one of substance relating to the construction of statutes of the United States which has not been, but should be, settled by this Court.

Prior to the enactment of the Winslow Act (Act of March 4, 1923, c. 285, 42 Stat. 1511) the Alien Property Custodian had, pursuant to orders promulgated by the President under authority conferred upon him by the Trading with the Enemy Act (Sections 5(a) and 12, Act of October 6, 1917, c. 106, 40 Stat. 411, 415, 423; Executive Orders of February 26, 1918, No. 2813, and July 16, 1918, No. 2916), charged against property held by him disbursements actually made to depositaries and the like in respect of such property (R. 9; see, also, Report of the Alien Property Custodian, Senate Document No. 181,

67th Congress, 2d Session, p. vi), but had not allocated any portion of such property to payment of the administrative expenses of his office. Section 2 of the Winslow Act, *supra*, which was the first statute providing for the return of sequestered enemy property, amended the Trading with the Enemy Act by adding thereto Section 24 (*infra*, p. 15), authorizing the Custodian to pay the necessary expenses incurred in administering the property held, "out of the money or other property * * * in respect of which such expenses are incurred, or * * * out of any other money or property held for the same person."[2]

Following the enactment of the Winslow Act, the Custodian adopted the practice of withholding from principal and interest paid out under that Act a small percentage by way of contribution towards the expenses of his office. (R. 10.) Congress was ad-

[2] The Treaty of Peace between the United States and Germany which was proclaimed November 14, 1921 (42 Stat., Pt. 2, 1939), incorporated by reference Part X of the Treaty of Versailles, whereby every action taken or to be taken with regard to sequestered property, including payment of charges and expenses in respect thereto, was ratified and confirmed, and it was further agreed that no German national should bring any action in respect of any act or omission under "the exceptional war measures, laws or regulations of any Allied or Associated Power" (Art. 298). Notwithstanding this agreement, Congress provided by the Winslow Act, *supra*, for the return of the corpus of sequestered property up to $10,000 and payment of income not exceeding $10,000 per annum. (See H.Rep. No. 1565, 67th Cong., 4th Sess.) The Settlement of War Claims Act authorized the return of 80% of the remaining principal and accrued income. Act of March 10, 1928, c. 167, 45 Stat. 254.

vised of this practice and of the exact percentages which were being deducted at various times, and was further informed that beginning February 1, 1928, all expenses of the Custodian's office had been paid in this manner. See Annual Reports of the Alien Property Custodian for 1925 (Sen. Doc. No. 94, 69th Cong., 1st Sess., p. 10) and 1927 (H.Doc. No. 302, 70th Cong., 1st Sess., *infra*, p. 16).

With this information before it, Congress enacted the Independent Offices Appropriation Act for the fiscal year 1929 (Act of May 16, 1928, c. 580, 45 Stat. 573, 574) which contained no appropriation for the expenses of the Alien Property Custodian, but provided that:

> All expenses of the office of the Alien Property Custodian * * * including compensation of the Alien Property Custodian at not to exceed $10,000 per annum; shall be paid from interest and collections on trust funds and other properties under the control of such Custodian.

At the hearings relative to this appropriation bill, the Custodian explained in detail the method by which the expenses of his office were being paid, and stated that beginning with November 1, 1927, he had succeeded in making the office self-sustaining by deducting 2 percent in lieu of the 1 percent which had theretofore been charged. See transcript of Hearings before the Subcommittee of the Committee on Appropriations of the House of Representatives relative to the Independent Offices Appropriation Bill,

1929, 70th Cong., 1st Sess., December 13, 1927, pp. 3, 7–8, 10–11, 13–14. This information was incorporated in the Report of the Appropriations Committee (H.Rep. No. 293, 70th Cong., 1st Sess., *infra*, p. 16), which stated that the office had become self-supporting by reason of charges made "under the terms of the Winslow Act" and recommended the adoption of the provision eventually enacted. The prevailing practice in respect of administrative charges was also explained on the floor of the House, express mention being made of the rates in effect at various times. See Appendix B, *infra*, pp. 17–18.

There is no doubt, therefore, that Congress was fully advised of the practice when it enacted the Independent Offices Appropriation Act, *supra*, and it is plainly to be inferred that it considered that practice to be in accord with Section 24 of the Trading with the Enemy Act, *supra*. In any event, the enactment of the Appropriation Act must, we submit, be regarded as a ratification of the deductions made prior thereto and as express authority for deductions to be made therafter. Congress was under no legal obligation to return any of the property seized and could authorize or ratify any disposition of such property or any part thereof, as it might see fit. See *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 11. The question presented is, therefore, solely one of statutory construction, and we submit that the court below erred in holding that the deductions were unauthorized.

2. The court below erred, we submit, in holding that the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379, compelled the conclusion which it reached. That case involved the property of a neutral which had been seized in the mistaken belief that it belonged to an enemy alien. The Court held that the Custodian was not entitled to charge expenses of administration against property which the law did not intend that he should seize. Concededly, the opinion contains language tending to support the decision below. That language, however, was not necessary to the disposition of the case, and in view of the legislative history to which we have referred, some of which has not previously been called to the attention of this Court, and of the fact that the seizure of the respondent's property was undoubtedly rightful, we feel justified in contending that the *Escher* case should not be regarded as controlling here.

3. The question presented is of considerable importance in the administration of the office of the Alien Property Custodian. The Custodian has not maintained an accounting system which would enable him to determine the cost of administering each individual trust under his control. Consequently, if the decision below stands, the respondent and others similarly situated will presumably be held entitled to recover the full amounts claimed. This will necessitate the appropriation by Congress of large sums of money to satisfy the claims and to pay future expenses of the Custodian's office, although Congress

clearly intends that the office shall be self-supporting and has made no appropriations for its operation since 1928. There are now pending in court fourteen cases involving the question here presented, and it is highly desirable that the matter be settled.

Wherefore, it is respectfully submitted that this petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

FEBRUARY, 1934.

APPENDIX A

STATUTES

Section 24 of the Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. 411, added thereto by Section 2 of the Winslow Act of March 4, 1923, c. 285, 42 Stat. 1511, 1516, provides:

> SEC. 24. The Alien Property Custodian is authorized to pay all taxes (including special assessments), heretofore or hereafter lawfully assessed by any body politic against any money or other property held by him or by the Treasurer of the United States under this Act, and to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such taxes and expenses shall be paid out of the money or other property against which such taxes are assessed or in respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this Act.

The Independent Offices Appropriation Act of May 16, 1928, c. 580, 45 Stat. 573, 574, provides in part:

> ALIEN PROPERTY CUSTODIAN
>
> All expenses of the office of the Alien Property Custodian authorized by the Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, including compensation of the Alien Property Custodian at not to exceed $10,000 per annum; shall be paid from interest and collections on trust funds and other properties under the control of such Custodian.

APPENDIX B

The Annual Report of the Alien Property Custodian for 1927 (H.Doc. No. 302, 70th Cong., 1st Sess., p. 2) contains the following statement:

> Beginning November 1, I instituted an important change in the method of paying the expenses of the office. All the salaries except the custodian's salary from November 1 to December 31, 1927, were paid from the funds in my custody through the retention of a small percentage on the funds handled, as will appear in detail in one of the following tables. By reason of this change a total of $67,634.71 has been turned back into the Treasury as unexpended from appropriations previously made. Since February 1, 1928, all expenses of every kind and character in connection with administering the funds and property in my custody have been paid from the funds being handled.

On page 7 of the same report there appears a table showing the rates of commissions taken at various times from July 1, 1926, to December 31, 1927, in connection with the administration of alien property.

The Report of the Appropriations Committee of the House of Representatives relative to the Independent Offices Appropriation Bill, 1929 (H.Rep. No. 293, 70th Cong., 1st Sess., p. 2), contains the following statement in reference to the expenses of operation of the office of the Alien Property Custodian:

ALIEN PROPERTY CUSTODIAN

> For the office of the Alien Property Custodian the committee recommends a change in the language of the paragraph providing for

the expenses of this activity. Under the terms of the Winslow Act, the Alien Property Custodian is authorized and directed to make certain charges in the handling of trust funds and other properties, and as a consequence the cost of the work of this establishment has become self-sustaining. The language recommended by the committee is as follows:

> All expenses of the office of the Alien Property Custodian authorized by the act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, including compensation of the Alien Property Custodian at not to exceed $10,000 per annum, shall be paid from interest and collections on trust funds and other properties under the control of such custodian.

The provisions of the above paragraph limit the maximum compensation of the Alien Property Custodian to $10,000 per annum, which heretofore has been at the rate of $7,500 per annum.

During the course of the debate on the floor of the House relative to the Independent Offices Appropriation Act, 1929, the following statements were made by Mr. Vinson, a member of the Committee on Appropriations, and Mr. Wood, Chairman of the same Committee (Congressional Record, 70th Cong., 1st Sess., Vol. 69, Pt. 2, pp. 1745, 1799):

Mr. VINSON:

* * * * *

> According to the record presented to us, this office, beginning with November 1, was made self-sustaining, which is explanatory of the decrease in the appropriation requested from that which was carried for the current fiscal year. That amount was $98,000. This is

made possible by a change in the charges against the property and income in possession of this office. Heretofore the charge has been 1 per cent on income and one-fourth of 1 per cent on principal cash. Under the new plan the charge would be 2 per cent on income; nothing on receipts of principal, but 2 per cent on principal paid out. With this charge written off, Senator Sutherland states that the property will net an interest earning of 3½ per cent or more at the time of its return.

* * * * *

Mr. WOOD:

* * * * *

I wish to say in passing that the present officer in charge of alien property has carried out to the letter the provisions of the Winslow Act in making the office of the Alien Property Custodian self-supporting. A reference to the hearings in this matter will show that the office of the Alien Property Custodian has been conducted at far less expense, in proportion to the amount of assets on hand and the responsibilities involved, than at any time heretofore.

U. S. GOVERNMENT PRINTING OFFICE 1934

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 795

UREY WOODSON, AS ALIEN PROPERTY CUSTODIAN OF the United States, and W. A. Julian, as Treasurer of the United States, petitioners

v.

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT VORmals Roessler, a Corporation, Frankfurt a/Main, Germany

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The Supreme Court of the District of Columbia rendered no opinion. The opinion of the Court of Appeals (R. 106–109) is reported in 68 F. (2d) 391.

JURISDICTION

The decree of the court below was entered November 20, 1933. (R. 109.) The petition for a writ of certiorari was filed February 7, 1934, and was

granted March 19, 1934. (R. 113.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Independent Offices Appropriation Act for 1935 precludes recovery by the respondent, a former enemy alien, of amounts deducted on a percentage basis by the Alien Property Custodian from property seized by him pursuant to the Trading with the Enemy Act, such deductions having been made for the purpose of paying the general or administrative expenses of the Custodian's office.

2. Whether under the statutes in effect prior to the enactment of the Independent Offices Appropriation Act for 1935 the Alien Property Custodian had authority to make the deductions referred to in the first question.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra*, pp. 28–30.

STATEMENT

The respondent brought a bill in equity against the petitioners' predecessors in office in the Supreme Court of the District of Columbia under the Trading with the Enemy Act and the several amendments thereto. The bill of complaint (R. 1–8), as amended (R. 9–13), alleged substantially the following facts:

The respondent is a corporation organized and existing under the laws of Germany. (R. 1:) At the time of the entry of the United States into the late war the respondent owned certain property in the United States, including a large number of shares of stock of three American corporations. (R. 2.) At that time also Holzverkohlungs Industrie Aktiengesellschaft, likewise a German corporation, owned certain property in this country, including shares of stock in an American corporation. (R. 2.) Pursuant to the provisions of the Trading with the Enemy Act, the Alien Property Custodian seized on the books of the various domestic corporations all of the right, title and interest of the respondent and Holzverkohlungs Industrie Aktiengesellschaft in and to the stock mentioned above, as well as other property, and since the date of such seizure has managed and administered the property so seized, together with the proceeds and earnings thereof and additions and accretions thereto, under the provisions of the Trading with the Enemy Act as from time to time amended. (R. 2.)

On or about July 16, 1930, Holzverkohlungs Industrie Aktiengesellschaft was, pursuant to the provisions of German law, merged with the respondent, and following such merger all property held by the Alien Property Custodian in the name of Holzverkohlungs Industrie Aktiengesellschaft was duly transferred on the Custodian's books to the account of the respondent. (R. 2.)

Subsequent to the enactment of the Winslow Act of March 4, 1923, each corporation filed a notice of claim with the Alien Property Custodian and obtained the release of $10,000 principal and income on the remaining property at not exceeding $10,000 per annum. (R. 9.)

After the enactment of the Settlement of War Claims Act of March 10, 1928, the two corporations likewise filed claims under that Act and received 80 percent of the property still held by the Custodian less amounts reserved for income taxes tentatively determined and certain other deductions hereinafter mentioned. (R. 3.)

Prior to the allowance of the claims under the Winslow Act, the Alien Property Custodian had deducted from the property of the two corporations certain amounts to cover fees, costs and commissions alleged to be due to depositaries or other persons for the costs and expenses of collecting, securing and safeguarding the property of the two claimants. (R. 9.) These sums are not involved in the present suit. (R. 9.)

Whenever the Alien Property Custodian released principal or income to either of the corporations under the Winslow Act, he deducted from the money to be released an amount equal to 1 percent on claims allowed and paid during the years 1924 to 1927, inclusive, and 2 percent on claims allowed and paid in 1928. (R. 9, 10.) The amounts so withheld aggregated $1,400. (R. 10.)

Whenever the Custodian released any property under the Settlement of War Claims Act, he withheld an amount equal to 2 percent of the sums thus released. (R. 10.) These amounts, which were deducted at various times during the years 1929 to 1931, inclusive, aggregated $60,346.52. (R. 10.) The Custodian also, when crediting the aliens with interest earned on moneys deposited in the Treasury, deducted 1 percent in respect of interest so earned during the years 1923 to 1927, inclusive, and 2 percent in respect of interest earned in later years. (R. 11.). These amounts aggregated $8,142.31. (R. 11.)

The amounts deducted from principal and income released under the Winslow Act and the Settlement of War Claims Act represented charges for administrative expenses and were deposited by the Custodian either in a special account maintained at the Commercial National Bank of Washington, D.C., or in a special account maintained in the United States Treasury for the credit of the Alien Property Custodian. (R. 12.) Out of said funds the Custodian has at various times withdrawn and is continuing to withdraw money for paying the administrative expenses of his own office and for paying to American, neutral and allied nationals sums due them under the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379. (R. 4, 5.) The deductions from Treasury interest have not, to the respondent's knowledge, been given any designa-

tion except possibly that of "commission." (R. 12.)

The aggregate of the funds on deposit in the special accounts in the Commercial National Bank and the Treasury was, on December 31, 1930, $4,143,573.27. (R. 5.) This balance was less than the aggregate of the amounts deducted and withheld by the Custodian upon the property of all claimants whose claims had been allowed and was insufficient to pay in full all claimants, including the respondent, whose money had been paid into said accounts. (R. 5.) The petitioners do not have available any other funds which could lawfully be used to make up the deficiency in the event it should ultimately be held that the deduction of administration expenses was unauthorized and that the several claimants are entitled to have the money refunded. (R. 5.)

The Alien Property Custodian has not furnished any statement to the respondent showing what, if any, portion of the amounts thus withheld was necessary for securing, protecting or administering the property of the respondent and Holzverkohlungs Industrie Aktiengesellschaft, respectively, and what were the number of hours of work spent by and the rate of compensation paid to those employees of the Custodian who performed any such necessary services. (R. 6, 12.) The Custodian has kept no records showing what portion of said amounts withheld is properly allocable to the ex-

pense of administering the property of the two claimants. (R. 6–7, 12.)

The respondent asked that the petitioners be required to account for all sums withheld on account of administrative expenses and to refund $69,888.83 or such greater amount as might be found due. (R. 12.) It also asked the court to declare the existence of a lien in its favor on the special accounts mentioned above, to enjoin the petitioners from making payments out of said funds to anyone but the respondent, and, if deemed advisable, to appoint a receiver to take charge of the funds. (R. 8, 13.)

The petitioners filed an answer to the amended bill of complaint and also moved that the bill be dismissed as insufficient in law. (R. 14–26.) The Supreme Court of the District of Columbia overruled said motion without prejudice (R. 101), and a special appeal was taken to the Court of Appeals, which affirmed the decree of the lower court.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Alien Property Custodian was without authority to deduct and withhold from the property held by him in the name of the respondent and Holzverkohlungs Industrie Aktiengesellschaft amounts computed on a percentage basis as a charge for the expense of administering such property.

2. In holding that the Alien Property Custodian had authority to deduct and withhold from the

property held by him as aforesaid only the actual cost or expense incurred in administering said property.

3. In holding that the Alien Property Custodian must account to the respondent in detail for the expense of administering said property, showing what part of the amounts deducted and withheld represented the cost of such administration.

4. In holding that the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379, requires the conclusion that the Alien Property Custodian was without authority to make deductions on a percentage basis as aforesaid in respect of property owned by enemy aliens at the time of seizure.

5. In affirming the decree of the Supreme Court of the District of Columbia, denying the motion to dismiss the bill of complaint.

SUMMARY OF ARGUMENT

I

In the Independent Offices Appropriation Act for 1935, passed March 28, 1934, Congress has deprived the courts of jurisdiction to enter a judgment in favor of the respondent. The new provision is valid as a withdrawal of the sovereign's consent to be sued, as an exercise of the complete authority over the property of enemy aliens seized during the war, and as a ratification of the deductions of which the respondent complains.

II

The deductions upon a percentage basis made by the Custodian after the passage of the Independent Offices Appropriation Act for the fiscal year 1929 were authorized by that Act. When the Act was passed Congress was aware that the Custodian had made such deductions since the enactment of the Winslow Act in 1923 and that the Custodian planned to continue the practice in the future. Congress did not disapprove the practice, but on the contrary, when informed that the Custodian's office would support itself from the deductions, made no appropriation, and provided that all expenses of the office should be paid from property in the control of the Custodian.

Deductions made by the Custodian while the Winslow Act was in effect were first brought to the attention of Congress by the Custodian's report for 1925, and were not disapproved. The enactment of the Appropriation Act for 1929 must be considered either an approval or a ratification of the deductions.

The rule that continued administrative construction and practice, known to Congress, is not to be readily overruled is applicable here.

The decision of this Court in *Escher* v. *Woods*, 281 U.S. 379, does not control the case at bar, for that case involved deductions from property mistakenly taken from a friendly alien. Certain

language in the opinion, relied upon by the court below, should be considered in the light of the type of case then presented, and not given the general application accorded to it below.

The respondent may not complain that deductions from principal were not authorized under the Appropriation Act for 1929 since the total deductions made did not equal the interest earned upon the property.

ARGUMENT

I

THE INDEPENDENT OFFICES APPROPRIATION ACT FOR 1935 WITHDRAWS THE CONSENT TO SUIT AND RATIFIES THE MAKING OF THE DEDUCTIONS

A brief résumé of the situation underlying the controversy presented in the instant case will, in our opinion, prove helpful to the Court, and is therefore made at the outset.

The office of the Alien Property Custodian was created by the Trading with the Enemy Act of October 6, 1916, and the Custodian was empowered to receive all money and other property of enemy aliens which might be transferred to him under the Act. (c. 106, Sec. 6, 40 Stat. 411, 415.) With respect to property other than money, the Custodian was vested with all the powers of a common-law trustee and authorized to exercise such powers as though he were the absolute owner, under the direction and supervision of the President. (Sec. 12,

as amended by the Act of March 28, 1918, c. 28, 40 Stat. 459, 460.) Orders of the President authorized the Custodian to pay all reasonable expenses incurred in securing possession of and administering the property out of the property from which the expenses arose. Executive Orders of February 26, 1918, No. 2813, and July 16, 1918, No. 2916. The Custodian accordingly charged property held by him with disbursements actually made to depositaries and the like (see R. 9; Report of Alien Property Custodian, S.Doc. No. 181, 67th Cong., 2d Sess., p. vi), but prior to March, 1923, office expenses of the Custodian and salaries of employees were paid from Congressional appropriations. Report of Alien Property Custodian for 1923, H.Doc. No. 155, 68th Cong., 1st Sess., pp. 2–3.

The Winslow Act of March 4, 1923, c. 285, 42 Stat. 1511, provided for the return to the former owners of part of the sequestered property, and Section 2 thereof amended the Trading with the Enemy Act by adding thereto Section 24 (*infra*, p. 29) authorizing the Custodian to pay the "necessary expenses" incurred in securing and administering the property "out of the money or other property * * * in respect of which such expenses are incurred." After passage of the Winslow Act the Custodian began to make flat-rate deductions for administrative expenses—one per cent from income received, one-fourth of one per cent from principal received in cash, and one per-

cent from property returned under the Winslow Act. Report of Alien Property Custodian for 1925, S.Doc. No. 94, 69th Cong., 1st Sess., p. 10; Report of Alien Property Custodian for 1927, H.Doc. No. 302, 70th Cong., 1st Sess., p. 7; Report of House Committee on Appropriations, H.Rep. No. 293, 70th Cong., 1st Sess., p. 2; R. 9–10. Beginning with November 1, 1927, the office of the Custodian became self-supporting, except for the Custodian's salary, through the retention of two percent of income received and two percent of property returned. Report of Alien Property Custodian for 1927, *supra*, p. 2; Office Order No. 5, October 20, 1927, *infra*, p. 41.[1]

The Settlement of War Claims Act authorized the return of 80 percent of the remaining principal and accrued income to the former owners (Act of March 10, 1928, c. 167, 45 Stat. 254), and the Independent Offices Appropriation Act for 1929 (*infra*, p. 30) provided that all expenses of the Custodian's office should be paid from interest and collections on trust funds and other property under the Custodian's control.

No appropriation has been provided for the Custodian's office since 1928, and all expenses of the office have since been paid out of deductions made

[1] The Custodian has continued the two percent deductions. Reports of Alien Property Custodian for 1928, 1930, 1931, 1932 (H.Doc. No. 369, 70th Cong., 2d Sess., p. 2; H.Doc. No. 200, 71st Cong., 2d Sess., p. 2; H.Doc. No. 25, 72d Cong., 1st Sess. p. 2; H.Doc. No. 425, 72d Cong., 2d Sess., p. 2).

from the property. Reports of Alien Property Custodian for 1931, 1932, *supra,* and 1933 (H.Doc. No. 133, 73d Cong., 2d Sess., p. 3).

Flat-rate deductions were made from the respondent's property returned under the Winslow Act during 1924–1927, from property returned under the Settlement of War Claims Act during 1929–1931, and from interest credited on moneys deposited in the Treasury, earned during 1923–1931. (R. 9–10, 11.)

Since the petition for a writ of certiorari was granted in this case, Congress has passed a law which in our opinion unequivocally disposes of every issue involved in the case. The Independent Offices Appropriation Act for the fiscal year ending June 30, 1935 (Public No. 141), passed over the veto of the President, March 28, 1934 (*infra,* p. 28) contains the following applicable provision:

> No claim shall be filed * * * nor shall any suit be instituted or maintained against the Alien Property Custodian or the Treasurer of the United States, or the United States, under any provisions of law, by any person who was an enemy or ally of enemy as defined in the Trading with the Enemy Act, as amended, * * * nor judgment entered in any such suit heretofore or hereafter instituted, for the recovery of any deduction or deductions, heretofore or hereafter made by the Alien Property Custodian from money or properties, or

> income therefrom, held by him or by the Treasurer of the United States hereunder, for the general or administrative expenses of the office of the Alien Property Custodian, * * *.

There is, we submit, no room for doubt that the statute was intended to deprive courts of jurisdiction to entertain suits of this character or to proceed further with actions already brought for the purpose of recovering deductions made for the general or administrative expenses of the Custodian's office. The instant case is plainly within the class of cases to which the Act was directed. In its bill of complaint the respondent stated that the deductions sought to be recovered, except those made from Treasury interest, represented "administration expenses" or "administrative expense." (R. 12.) While, according to the bill, deductions from Treasury interest were not so designated, it does appear that they, too, were deposited in the special accounts in the Treasury and the Commercial National Bank (R. 12) which were and are still used for paying the administrative expenses of the office and for repaying, pursuant to the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379, amounts previously deducted on account of administrative expenses from the property of American citizens and nonenemy aliens. (R. 4–5.) We do not believe that there is any real dispute as to these facts or that it will be suggested that the recent Act is not applicable to this case.

It may, perhaps, be argued that Congress was without power to bar suits in respect of deductions effected prior to the enactment of the statute or to prohibit the rendition of judgments in cases pending at that time. We submit that there would be no merit to such a contention. A suit against the Custodian is one against the United States. *Banco Mexicano* v. *Deutsche Bank,* 263 U.S. 591, 602–603; *von Bruning* v. *Sutherland,* 29 F. (2d) 631 (App. D.C.). Its purpose is not to impose liability upon the Custodian individually, but to recover property held by him as an agent of the Government.[2] It differs in this respect from a suit against a Collector of Internal Revenue, which, for reasons mainly historical, is regarded as an action against the Collector individually, although in the event of recovery payment is assumed by the United States. Cf. *Graham & Foster* v. *Goodcell,* 282 U.S. 409, 430–431.

The respondent is seeking to recover specific property, or the proceeds thereof, which was lawfully seized by the Custodian at the direction of Congress in the exercise of the war power. The authority of Congress with respect to the disposition of such property is absolute. *United States* v.

[2] It will be observed that in the original bill of complaint the defendants were named both individually and in their official capacities. (R. 1.) On June 28, 1933, the court below granted respondent's motion to substitute the new Custodian and Treasurer, naming them in their official capacities alone. (R. 105.)

Chemical Foundation, Inc., 272 U.S. 1, 11; *White* v. *Mechanics Securities Corp.*, 269 U.S. 283, 300–301. No action to recover sequestered property could be maintained by an enemy alien prior to the passage of the Winslow Act in 1923.[3] That Act amended the Trading with the Enemy Act by authorizing suits in equity under Section 9 (a), which provided that in such suits "the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant." (c. 285, 42 Stat. 1511.) The present action was brought under that section. (R. 7.)

Since the suit is one against the United States and relates to property over the disposition of which the United States has absolute, unqualified control, the consent to be sued may, we submit, be withdrawn at any time, for it is well settled that suit against the sovereign is a matter of grace. *Beers* v. *Arkansas*, 20 How. 527; *De Groot* v. *United States*, 5 Wall. 419, 432; *Sutherland* v. *Norris*, 24 F. (2d) 414 (C.C.A. 3d), certiorari denied, 277

[3] The Treaty of Berlin, proclaimed November 14, 1921 (42 Stat., Pt. 2, 1939, 1943) recognized the complete authority of the United States over the seized property and, incorporating by reference Part X of the Treaty of Versailles, ratified every action taken or to be taken with respect to the property, including the deduction of charges and expenses. The treaty further provided that no German national should bring any action in respect to any act or omission under "the exceptional war measures, laws or regulations of any Allied or Associated Power." (Treaty of Versailles, Part X, Sec. IV, Annex 1–3.)

U.S. 602; *Kogler* v. *Miller*, 288 Fed. 806 (C.C.A. 3d). See also *Chase* v. *United States*, 50 C.Cls. 293, 306–314. The effect of the Independent Offices Appropriation Act for 1935 is to repeal *pro tanto* the statute under which the action was instituted and upon which the jurisdiction of the trial court was based. We submit, therefore, that the decree below should be reversed and the case remanded with directions that it be dismissed for lack of jurisdiction.

Even if the action may not properly be regarded as one against the United States, we still think that the power of Congress to preclude recovery is clear. The ground, if any, for an action against the Custodian individually would be that he retained property of the respondent without authority of law. But since, as we have pointed out, Congress has absolute power with respect to the disposition of enemy property, it could, by ratifying acts theretofore unauthorized, confer upon the Custodian statutory protection against suits founded upon such acts. We submit that the Independent Offices Appropriation Act for 1935 has precisely that effect. The specific reference to deductions of the kind here involved, namely, those which do not exceed 2 percent of income received or property returned, plainly shows that it was the purpose of Congress to authorize the Custodian to continue the practice in the future and to ratify all such deductions made in the past. Where the

power over the subject matter is as complete and unqualified as it is here, such ratification is valid and relates back, giving authority for the deductions as of the time they were made. *United States* v. *Heinszen & Co.*, 206 U.S. 370; *Street* v. *United States*, 133 U.S. 299, 307.

II

EVEN BEFORE THE PASSAGE OF THE INDEPENDENT OFFICES APPROPRIATION ACT FOR 1935 CONGRESS HAD APPROVED AND AUTHORIZED THE PRACTICE OF MAKING DEDUCTIONS FOR ADMINISTRATIVE EXPENSE UPON A PERCENTAGE BASIS

While we think the Independent Offices Appropriation Act for 1935 controls the instant case and compels a reversal of the decision below, yet irrespective of the provisions of that Act, we submit that the deductions were properly made under the statutes previously applicable. As pointed out in Point I of this brief, the authority of Congress over property taken from enemy aliens is complete, and the disposition of the property is governed solely by the laws of Congress. Therefore, if doubt arises as to the propriety of any action of the officer charged by Congress with the handling and ultimate distribution of the property, the answer is to be found in the statutes of the United States. We contend that when the applicable statutes are properly construed, it appears that the Alien Property Custodian was authorized to make the deductions complained of here.

The major portion of the amounts sued for by the respondent were retained by the Alien Property Custodian subsequent to the passage of the Independent Offices Appropriation Act for the fiscal year 1929, and the only question with respect to those amounts is whether that Act authorized the flat-rate deductions which were thereafter made.[4] The Act (*infra*, p. 30) provided that:

> All expenses of the office of the Alien Property Custodian * * * including compensation of the Alien Property Custodian at not to exceed $10,000 per annum; shall be paid from interest and collections on trust funds and other properties under the control of such Custodian.

It will be seen that the Act contained no specific direction in regard to the manner in which the expenses should be allocated to the various funds in the control of the Custodian. But, at the time of the passage of the Act, Congress was aware of the fact that the Custodian had, since the passage of the Winslow Act, regularly followed a practice of making flat-rate deductions, both from moneys received and from property returned under the Winslow Act, and it knew that the Custodian planned to continue the practice in the future.

In the report of the Custodian for 1925 (*infra*, p. 31) Congress was advised that a charge of one

[4] This applies to the deductions of $60,346.52 made from property released under the Settlement of War Claims Act (R. 10), and to part of the claim for $8,142.31 deducted when interest was credited on moneys deposited in the Treasury. (R. 11.)

percent upon all income received had been made between March, 1923, and March, 1925. The report of the Custodian for 1926 (*infra*, p. 35) contained a statement of the revenues of the Custodian's office, which showed that deductions had been made from principal and income returned under the Winslow Act. In the report of the Custodian for 1927 (*infra*, p. 39) Congress was advised that from July 1, 1926, to October 31, 1927, the practice had been to deduct one percent from income received and one-fourth of one percent from principal received, and that from November 1, 1927, to December 31, 1927, a deduction of two percent from income was made. The same report disclosed that when property was returned to claimants, an administrative deduction of one percent was made from July 1, 1926, to October 31, 1927, and two percent from November 1, 1927, to December 31, 1927.[5]

[5] While this report did not reach Congress until two days before the passage of the Independent Offices Appropriation Act for 1929, it appears that the information contained in the report had been presented earlier in the hearings on the bill. See Transcript of Hearings before a sub-committee of the Committee on Appropriations of the House, 70th Cong., 1st Sess., December 13, 1927, pp. 3, 7–8, 10–11, 13–14, *infra*, p. 36). The Custodian filed with the Committee a statement of estimated revenues for future operation of the office which included revenues expected from flat-rate deductions (Idem, pp. 4–5).

In earlier hearings Congressional committees had been informed of the practice of making deductions on a percentage basis. See Transcript of hearings before a subcommittee of the House Ways and Means Committee and a sub-

The report of the Committee on Appropriations with respect to the bill discloses that Congress knew that the deductions had been made for maintenance of the Custodian's office since 1924, and the same report states that the work of the Custodian had become self-sustaining (H.R. No. 293, 70th Cong. 1st Sess., *infra*, p. 38). Moreover, during the debate in the House, Mr. Wood, Chairman of the Appropriations Committee, stated that the Custodian's office had become self-supporting, and Mr. Vinson, a member of the same Committee, gave an accurate summary of the flat-rate deductions that had been made in the past and referred to the change in rate effective as of November 1, 1927, which would apply in the future. See Cong. Rec. 70th Cong., 1st Sess., Vol. 69, Pt. 2, pp. 1745, 1799 (*infra*, p. 40).

We submit that when Congress, having such detailed knowledge of the past and contemplated future practice of the Custodian, passed the Independent Offices Appropriation Bill for 1929, it plainly indicated its approval of the method adopted by the Custodian and authorized its con-

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committee of the House Committee on Interstate and Foreign Commerce, entitled "Return of Alien Property", 69th Cong., 1st Sess., April 1926, pp. 71, 88, 89 (*infra*, p. 31); Transcript of Hearings before House Ways and Means Committee, entitled "Return of Alien Property No. 4", 69th Cong., Interim 1st and 2d Sess., Nov., 1926, pp. 447, 467, 468 (*infra*, p. 33); Transcript of Hearings before a subcommittee of the House Committee on Appropriations, relative to the Independent Offices Appropriation Bill for 1928, 69th Cong., 2d Sess., Dec. 14, 1926, pp. 1, 8 (*infra*, p. 34).

tinuance.[6] The flat-rate deduction method has since been continued to the knowledge of Congress and without disapproval. See Reports of the Alien Property Custodian for 1928, 1930, 1931 and 1932 (H.Doc. 369, 70th Cong. 2d Sess., p. 2; H.Doc. 200, 71st Cong., 2d Sess. p. 2; H.Doc. 25, 72d Cong. 1st Sess., p. 2; H.Doc. 425, 72d Cong., 2d Sess., p. 2).

The lesser portion of the amounts involved in the instant case were deducted before the passage of the Independent Offices Appropriations Act for 1929, and while the Winslow Act was in effect.[7] Deductions were made immediately following the enactment of the Winslow Act and continuously from then on. As has been pointed out above, Congress was advised of the practice, at least as early as the Custodian's report for 1925, and was thoroughly acquainted with the facts in 1928, when the Appropriation Act for 1929 was under consideration. The report of the Committee on Appropriations (*infra*, p. 38) referred to the fact that the Winslow Act authorized the making of cer-

[6] For the first time since the Custodian's office was established the Appropriations Act for 1929 made no appropriation to maintain the office. A list of the appropriations made since 1918 appears in the report of the Appropriations Committee on the 1929 Act, and indicates that Congress had reduced the appropriations radically, beginning with about 1924 when the flat-rate deduction method was begun. H.Rep. No. 293, 70th Cong., 1st Sess., p. 3.

[7] That is, $1400.00 deducted from property returned under the Winslow Act and part of the $8,142.31 deducted when interest was credited upon moneys deposited in the Treasury. (R. 10, 11.)

tain charges, and continued that "as a consequence the cost of the work of this establishment has become self-sustaining." Mr. Wood, Chairman of the Committee, said on the floor of the House that "the present officer in charge of alien property has carried out to the letter the provisions of the Winslow Act in making the office of the Alien Property Custodian self-supporting." (See p. 41, *infra*.) While the Winslow Act in terms merely authorized the Custodian to pay necessary expenses out of the property against which the expenses were incurred, yet the evident approval by Congress of the method adopted by the Custodian shows, we think, either that Congress intended in the Winslow Act to authorize flat-rate deductions, or that Congress ratified the deductions in enacting the Appropriations Act for 1929. We submit that, when, as here, Congress is officially informed of the conduct of an officer, who derives his authority from laws of Congress, and when that conduct is not only not disapproved or changed in later legislation but is made the basis for the omission of an appropriation which would be necessary if the officer had not acted as he did, it cannot reasonably be said that the officer has acted in an unauthorized manner.

With respect to deductions made both before and after 1928 the situation is, in our opinion, not substantially unlike that presented in cases in which administrative construction of and practice under a statute have been accorded great weight in de-

termining the intent of Congress. *Murphy Oil Co.* v. *Burnet*, 287 U.S. 299, 302–303; *Interstate Commerce Commission* v. *New York, New Haven & Hartford Railroad Co.*, 287 U.S. 178, 190; *McCaughn* v. *Hershey Chocolate Co.*, 283 U.S. 488, 492; *Brewster* v. *Gage*, 280 U.S. 327; *National Lead Co.* v. *United States*, 252 U.S. 140; *Logan* v. *Davis*, 233 U.S. 613, 627. There is here no re-enactment of a statute after administrative construction to demonstrate more clearly Congressional approval of the construction, as in some of the above cases, but the Custodian's practice was known to Congress for some time and was considered when the Appropriations Act for 1929 was passed and the appropriation for the Custodian's office first omitted. We submit that the rule of legislative approval of continued administrative construction and practice, enunciated in the cases above cited, is applicable here.

The court below was of the opinion that the case at bar was controlled by the decision of this Court in *Escher* v. *Woods*, 281 U.S. 379. In that case, citizens of Switzerland, whose property had been mistakenly seized as belonging to an alien enemy, were held entitled to recover flat-rate deductions made by the Custodian for administrative expenses. This Court said in the course of the opinion that there was no authority for "treating the property in the hands of the Custodian as one great trust, to be called on to bear the expenses of admin-

istration, as one homogeneous whole" (p. 384). While this language appears to have application generally to the authority of the Custodian, we submit that its intended scope is found in the discussion which followed in the opinion (p. 384–385):

> But, and this is the main thing, all of these provisions naturally are interpreted to refer to property that the Custodian is entitled to hold. It would be extraordinary if the charges incident to a seizure that the law did not intend the Custodian to make and a possession that the law requires him to surrender, were to be imposed upon the owner whose interests were sacrificed up to the moment of restitution. It seems to be going far enough to require him to bear the loss that he has suffered, without compelling him to pay the Government for its outlay in doing him harm.

We submit, therefore, that the decision in the *Escher* case, *supra,* is that Congress did not authorize the Custodian to charge for the administration of property which the Trading with the Enemy Act did not authorize to be seized in the first place. The manifestly just result reached in the *Escher* case, where the property should never have been taken from the possession of the owners, does not, we submit, control when the property has been rightfully seized and administrative charges made against it by a method of which Congress had specific knowledge. Congress was under no legal obligation to return any of the seized property and

could authorize any disposition of the property or any part thereof as it might see fit. *United States* v. *Chemical Foundation, Inc., supra,* p. 11. In these circumstances we think the historical legislative material which we have brought to bear upon the authority granted by Congress to the Custodian is of more significance here than in the *Escher* case, *supra.* All of the material we have presented here was not before the Court in that case, and we feel that language in the opinion in that case which was not essential to the decision may now properly be re-examined.

It may be argued that since the Independent Offices Appropriation Act for 1929 directed that expenses be paid "from interest and collections on trust funds and other properties under the control of such Custodian", deductions from principal either when received or when returned to owners were unauthorized. Cf. *Escher* v. *Woods,* 281 U.S. 379, 384. But if Congress did so intend, we should expect to find some comment to that effect during the thorough consideration of the Appropriation Act for 1929, for the Winslow Act contained no such limitation.[8] Furthermore, it appears from tables set out in the respondent's amended bill of complaint that deductions amounting to $69,888.83 were made from property that earned approxi-

[8] The provisions of the Appropriation Act with respect to the office of the Custodian were enacted exactly as recommended by the Committee to the House in the first instance. See H.Rep. No. 293, 70th Cong. 1st Sess., p. 2 (*infra,* p. 39).

mately a million dollars in interest (R. 10–11). There can be, therefore, no complaint that the deductions exceeded interest, and we submit that the circumstances surrounding the enactment negative any intent on the part of Congress to condemn the practice of basing flat-rate deductions on principal.

CONCLUSION

There is no longer jurisdiction in any court to enter a judgment in favor of the respondent. The deductions made from the respondent's property by the Alien Property Custodian were within his authority under the laws of Congress. We submit that the decision of the Court of Appeals should be reversed and the case remanded with directions that the respondent's amended bill of complaint be dismissed.

Respectfully submitted.

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APRIL, 1934.

APPENDIX A

STATUTES

The Independent Offices Appropriation Act for the fiscal year 1935 (Public No. 141), passed March 28, 1934, provides, in part, as follows:

> Subsection (a) of section 24 of the Trading with the Enemy Act, as amended, is amended by adding at the end thereof the following:
>
> No claim shall be filed with the Alien Property Custodian or allowed by him or by the President of the United States, nor shall any suit be instituted or maintained against the Alien Property Custodian or the Treasurer of the United States, or the United States, under any provisions of law, by any person who was an enemy or ally of enemy as defined in the Trading with the Enemy Act, as amended, and no allowance of any such claim now pending shall be made, nor judgment entered in any such suit heretofore or hereafter instituted, for the recovery of any deduction or deductions, heretofore or hereafter made by the Alien Property Custodian from money or properties, or income therefrom, held by him or by the Treasurer of the United States hereunder, for the general or administrative expenses of the office of the Alien Property Custodian, which deduction or deductions on the collection of any income do not exceed the sum of 2 per centum of such income or which on the return of any moneys or properties or in-

come therefrom, do not exceed the sum of 2 per centum of the aggregate value thereof at the time or times as nearly as may be, of such deduction or deductions, or, for the recovery of any deduction or deductions heretofore or hereafter made by the Alien Property Custodian from money or properties or income therefrom held by him or by the Treasurer of the United States hereunder, for any and all necessary expenses incurred and actually disbursed by the Alien Property Custodian or by any depositary for him in securing the possession, collection or control of any such money or properties or income therefrom, or in protecting or administering the same, as said general or administrative and other expenses and said aggregate value of returned money or properties or income therefrom have been heretofore or shall be hereafter determined by said Alien Property Custodian.

Section 24 of the Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. 411, added thereto by Section 2 of the Winslow Act of March 4, 1923, c. 285, 42 Stat. 1511, 1516, provides:

> SEC. 24. The Alien Property Custodian is authorized to pay all taxes (including special assessments), heretofore or hereafter lawfully assessed by any body politic against any money or other property held by him or by the Treasurer of the United States under this Act, and to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such taxes and expenses shall be paid out of the money or other property against which such taxes are assessed or in

respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this Act.

The Independent Offices Appropriation Act of May 16, 1928, c. 580, 45 Stat. 573, 574, provides in part:

ALIEN PROPERTY CUSTODIAN

All expenses of the office of the Alien Property Custodian authorized by the Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, including compensation of the Alien Property Custodian at not to exceed $10,000 per annum; shall be paid from interest and collections on trust funds and other properties under the control of such Custodian.

APPENDIX B

EXCERPTS FROM REPORTS OF THE ALIEN PROPERTY CUSTODIAN AND LEGISLATIVE MATERIAL

Annual Report of the Alien Property Custodian for 1925 (S.Doc. 94, 69th Cong., 1st Sess., p. 10):

> We have adopted the plan of charging an administrative fee of 1 per cent on the return of income received by this office for the accounts of former enemies. The right to charge this administrative fee has been confirmed by an opinion from the Attorney General. * * * We have deducted a fee of 1 per cent on all income received between March, 1923, and March, 1925.

Hearings before a subcommittee of the Committee on Ways and Means sitting in conjunction with a subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives, entitled " Return of Alien Property ", 69th Cong., 1st Sess., April 1926, relative to H.R. 10820, a Bill to provide inter alia, for the return to German nationals of property held by the Alien Property Custodian (pp. 71, 88, 89):

> STATEMENTS OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN, AND SEWALL W. ABBOTT, MANAGING DIRECTOR
>
> * * * * *
>
> Mr. RAYBURN. I have a notation here calling my attention to the fact that since

1921, 1 percent of all the property returned has been retained for the administration of this act.

Mr. SUTHERLAND. Yes; they are now retaining a very small percentage as these cases are adjudicated for administrative expenses and relieving the taxpayers to that extent. That would seem to be the fair way to do it, and not unfair to the trusts, to charge a small and inconsiderable sum for the administration of it. Such a charge is commonly made by trust companies handling properties. We charge much less than they do.

* * * * *

Mr. RAYBURN. Then it is not a fair statement to say that the expenses of the Custodian's office are covered by the appropriations made by Congress?

Mr. SUTHERLAND. No; I said that at the time I read those figures, that some of this expense was from the trusts.

Mr. RAYBURN (interposing). I did not know you stated that.

Mr. GARNER. Let me ask you this question in that connection. I understand that a lot of this property that is included in this three hundred million odd dollars has been returned to American citizens because it was taken originally through mistake—is that correct?

Mr. SUTHERLAND. Yes; there has been some of that.

Mr. GARNER. And you are retaining 1 percent of that property to administer this trust?

Mr. SUTHERLAND. The Department of Justice, I am advised, before I became connected with this office, did retain some sums for the administration.

Mr. OLDFIELD. Did they have authority of law to do that? Was it under the Winslow Act?

Mr. SUTHERLAND. I think an opinion was rendered by the Attorney General, based evidently upon the statutes or the general laws. He rendered an opinion in regard to that matter which seemed to settle it.

Mr. GARNER. Do you mean to say that the Attorney General rendered an opinion that Congress had passed a law——

Mr. SUTHERLAND (interposing): I do not say that, but I say that an opinion was rendered by the Attorney General which permitted this to be done, and it is under that opinion that this office has acted. Upon what they based that opinion, I am unable to say.

Mr. GARNER. Could you get that opinion and put it in the record?

Mr. SUTHERLAND. Yes.

[Then follow copies of the opinions of the Attorney General in which the Custodian was advised that he had authority to exact a commission upon property returned under the Winslow Act (89–94). On page 103 appears a table of receipts and disbursements of the Custodian which shows an account of receipts "derived from claims allowed under the Winslow Act approved Mar. 4, 1923."]

Hearings before the Committee on Ways and Means of the House of Representatives, entitled "Return of Alien Property No. 4, 69th Cong., Interim 1st and 2d Sess., Nov. 1926, (pp. 447, 467, 468):

STATEMENT OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN

* * * * *

Mr. GARNER. And you are still appropriating 1 percent, or some portion of the alien property, for the expenses of your office?

Mr. SUTHERLAND. Yes; we still make a deduction of a small percentage to cover the expenses. It does not cover all of the expenses, but a good portion of them. We are constantly reducing the appropriation that is made and covering more and more of the expense in under these sums that are deducted.

Mr. OLDFIELD. Do you deduct as much as 1 percent or more than 1 percent?

Mr. SUTHERLAND. It is 1 percent on claims allowed by our office, and I think we have reduced it on the Department of Justice claims now to a third of 1 percent. That is my recollection, that it is a half or a third of 1 percent on the claims passed by the Department of Justice.

* * * * *

Mr. SUTHERLAND. The attorneys' fees are not paid out of that 1 percent. That 1 percent covers clerk hire and the expense of office administration. The attorneys' fees, of course, are charged directly to the trust, just as a trust company would charge an item of necessary expense to the trust in connection with which it was incurred.

Hearings before a subcommittee of the House Committee on Appropriations, 69th Cong., 2d Sess., Dec. 14, 1926, relative to the Independent Offices Appropriation Bill for 1928 (pp. 1, 8):

STATEMENT OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN

* * * * *

Mr. WOOD. Does your report show the total cost of the administration of the Alien Property Custodian's office from its beginning?

Mr. SUTHERLAND. I have here a table which was submitted to the subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, Sixty-ninth Congress, page 103. From this table, it appears that the total appropriations have been $4,205,420. Our disbursements from appropriations have been $3,984,462.28. Our receipts from special account have been, to March 31, 1926, $234,698.64; and our disbursements, $224,600.87.

On special account No. 2, our receipts have been $584,242.23. Our disbursements under that account have been $520,791.46.

The receipts in special account are derived from claims allowed and disallowed by the Department of Justice. The receipts in special account No. 2 are derived from claims allowed under the Winslow act, approved March 4, 1923, according to the plan I described awhile ago, by which a small percentage is deducted.

Annual Report of the Alien Property Custodian for 1926, H.Doc. No. 91, 70th Cong., 1st Sess. (p. 18):

	Average per month	Twelve months
Revenues:		
Commissions taken on—		
Receipts of trust funds	$11,111.46	$133,337.54
Property returned under sec. 9	9,014.92	108,179.00
Income returned under sec. 23	6,440.16	77,281.93
Claims allowed by Department of Justice	3,139.10	37,669.18
Deductions for Federal reserve bank safe-keeping	2,933.32	35,199.83
Miscellaneous income, bank interest, etc	588.16	7,058.00
	33,227.12	398,725.48

[There follow in the report (pp. 21–23) three lists of employees of the Custodian's office indicating those whose salaries were paid from Congressional appropriation, those paid from commissions collected from the administration and return of trusts, and those paid from commissions collected from the administration and return of trusts in the alien property division of the Department of Justice.]

"Hearings before a subcommittee of the House Committee on Appropriations, 70th Cong., 1st Sess., Dec. 13, 1927, relative to the Independent Offices Appropriation Bill for 1929 (pp. 3, 13, 14):

STATEMENT OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN

* * * * *

I might say, in a general way, that beginning with November 1, we have made the office self-sustaining, so that now the only appropriation that I am asking for is the appropriation for my salary.

REVENUE FROM CHARGES ASSESSED AGAINST CLAIMS

Mr. Wood. I would like you to tell us, Senator, by what means you have succeeded in making your office self-supporting.

Mr. Sutherland. By taking a little larger percentage off of the property handled than we did before; just letting the property in our possession pay these expenses, which I think is only fair. We handle it very economically.

Mr. Wood. What percentage did you take, and how?

Mr. Sutherland. We have been taking on income 1 percent, and on principal cash one-fourth of 1 percent. Under the new plan we will take 2 percent on income. Nothing on receipts of principal, but take 2 percent on principal paid out. Under section 9 we have been making a 1 percent administrative charge. The Federal reserve bank expense for handling is one-fifth of 1 percent. The depositary turnover was $2.50 flat.

* * * * *

APPROPRIATIONS MADE FOR ADMINISTRATIVE EXPENSES

Mr. Vinson. Originally who fixed the rate of the charge of administration?

Mr. Sutherland. That was evolved in the practice of the office. Of course, they had to estimate it roughly in the beginning, but they changed from time to time, and finally fixed it at the lowest amount that would cover the administrative expense.

There was no desire to make any money. It was just a matter of a portion of the expenses being borne in that way.

The congressional appropriations were decreased from year to year after the first couple of years.

* * * * *

Mr. VINSON. I take it, Senator, that the increase in the rate of administrative charge was decided upon by you in an endeavor to collect such a sum of money as would make the whole matter self-sustaining.

Mr. SUTHERLAND. Yes; that was figured out by my accounting officer in connection with the representative of the General Accounting Office. It was figured very closely and accurately in order to reach just the amount necessary.

Mr. VINSON. That was the purpose of the increase?

Mr. SUTHERLAND. Yes. The total cost of the office up to date—that is, congressional appropriations and others—would be $5,550,376.26.

[The transcript (p. 4) contains a table of revenues of the Custodian's office setting forth in detail the deductions referred to in Mr. Sutherland's statement.]

Report of the Appropriations Committee of the House of Representatives relative to the Independent Offices Appropriation Bill, 1929 (H.Rep. No. 293, 70th Cong., 1st Sess., p. 2):

ALIEN PROPERTY CUSTODIAN

For the office of the Alien Property Custodian the committee recommends a change in the language of the paragraph providing for the expenses of this activity. Under the terms of the Winslow Act, the Alien

Property Custodian is authorized and directed to make certain charges in the handling of trust funds and other properties, and as a consequence the cost of the work of this establishment has become self-sustaining. The language recommended by the committee is as follows:

"All expenses of the office of the Alien Property Custodian authorized by the act entitled 'An act to define, regulate, and punish trading with the enemy, and for other purposes,' approved October 6, 1917, as amended, including compensation of the Alien Property Custodian at not to exceed $10,000 per annum, shall be paid from interest and collections on trust funds and other properties under the control of such custodian."

The provisions of the above paragraph limit the maximum compensation of the Alien Property Custodian to $10,000 per annum, which heretofore has been at the rate of $7,500 per annum.

Annual Report of the Alien Property Custodian for 1927 (H.Doc. No. 302, 70th Cong., 1st Sess., p. 2):

Beginning November 1, I instituted an important change in the method of paying the expenses of the office. All the salaries except the custodian's salary from November 1 to December 31, 1927, were paid from the funds in my custody through the retention of a small percentage on the funds handled, as will appear in detail in one of the following tables. By reason of this change a total of $67,634.71 has been turned back into the Treasury as unexpended from appropriations previously made. Since Feb-

ruary 1, 1928, all expenses of every kind and character in connection with administering the funds and property in my custody have been paid from the funds being handled.

[On page 7 of the same report there appears a table showing the rates of commissions taken at various times from July 1, 1926, to December 31, 1927, in connection with the administration of alien property.]

During the course of the debate on the floor of the House relative to the Independent Offices Appropriation Act, 1929, the following statements were made by Mr. Vinson, a member of the Committee on Appropriations, and Mr. Wood, Chairman of the same Committee (Cong. Rec., 70th Cong., 1st Sess., Vol. 69, Pt. 2, pp. 1745, 1799):

Mr. VINSON:

* * * * *

According to the record presented to us, this office, beginning with November 1, was made self-sustaining, which is explanatory of the decrease in the appropriation requested from that which was carried for the current fiscal year. That amount was $98,000. This is made possible by a change in the charges against the property and income in possession of this office. Heretofore the charge has been 1 percent on income and one-fourth of 1 percent on principal cash. Under the new plan the charge would be 2 percent on income; nothing on receipts of principal, but 2 per cent on principal paid out. With this charge written off, Senator Sutherland states that the property will net an interest earning of 3½ percent or more at the time of its return.

* * * * *

Mr. WOOD:

* * * * *

I wish to say in passing that the present officer in charge of alien property has carried out to the letter the provisions of the Winslow Act in making the office of the Alien Property Custodian self-supporting. A reference to the hearings in this matter will show that the office of the Alien Property Custodian has been conducted at far less expense, in proportion to the amount of assets on hand and the responsibilities involved, than at any time heretofore.

OCTOBER 20, 1927.

OFFICE ORDER #5, FOR THE INFORMATION OF THE DIVISION OF AUDITS, ACCOUNTING, AND CLAIMS

Effective November 1, 1927, this office will be operated on a self-sustaining basis, and the charges for administrative expenses will be as follows:

Revenues: For income	2%
Returns:	
Claims Paid, Section 9	2%
Income Payments, Section 23	2%

On claims paid by the Department of Justice and payments of Henkel's interest the charges will remain as heretofore.

The above procedure will eliminate all other charges which have been made under the old system.

C. D. BRAY,
Chief Clerk.

Approved.

HOWARD SUTHERLAND,
Alien Property Custodian.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 795

UREY WOODSON, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES, AND W. A. JULIAN, AS TREASURER OF THE UNITED STATES,

Petitioners,

vs.

DEUTSCHE GOLD UND SILBER SCHEIDEANSTALT VORMALS ROESSLER, A CORPORATION, FRANKFURT A/MAIN, GERMANY.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RICHARD H. WILMER,
Counsel for Respondent.

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Opinions Below.

The Supreme Court of the District of Columbia rendered no written opinion. The opinion of the Court of Appeals, District of Columbia, is reported in 68 F. (2d) 391, and may also be found in LXI Washington Law Reporter, p. 896.

Question Presented.

The only question presented is whether or not the Alien Property Custodian was authorized under the Trading with the Enemy Act, as amended, to deduct and retain from seized property of a former enemy, to cover administration expenses, an amount computed at a fixed percentage applicable alike to the property of all other similar claimants and bearing no relation to the actual and necessary cost of the work done or services performed in securing the possession, collection or control of the particular claimant's property or in protecting or administering the same.

Statement.

While the facts as stated in the petition are correctly stated so far as they go, there are certain other facts to which we desire to call the Court's attention. Also, in some instances it is believed that a slight elaboration of the facts stated may be helpful.

In originally securing the possession, collection and control of the property of the respondent and Holzverkohlungs Industrie Aktiengesellschaft, hereinafter referred to as Hiag, and in protecting and administering the same, the Custodian had actually paid out by way of fees, commissions, costs, attorneys' fees, etc., $40,251.74 in so far as the property owned by the respondent was concerned, and $13,608.12 in so far as the property owned by Hiag was concerned (R. 9), a total of $53,859.86. These expenses are detailed in Exhibits A and B, respectively, to the petitioners' answer (R. 27-29). The amount of these expenditures the respondent is not seeking to recover in this suit (R. 9). In passing, it is important to note that these actual expenses

regarded as necessary by the Custodian were charged against, and were paid out of the properties contained in the specific trusts of the two claimants in the amounts actually incurred and were not charged against the general administration costs of the Custodian's office. In principle this feature was dealt with in the manner which we contend herein was proper and should have been followed in the case of all other expenses incurred.

When property was released to the respondent and Hiag under the Winslow Act and the War Claims Act there were deducted 1% and 2% administration fees. From the property of the respondent there had been retained and withheld at the time this suit was instituted, as purporting to represent 1% and 2% administration fees, $39,599, and from the property of Hiag the amount of $20,747.52, in the aggregate $60,346.52 (R. 10). The record erroneously totals these amounts as $260,346.52 (R. 10).

In addition thereto the Custodian also deducted from Treasury interest earned after March 4, 1923, by the respondent's invested cash, the sum of $5,841.70, and from the Treasury interest earned by Hiag's invested cash $2,300.61, a total of $8,142.31 (R. 11). These amounts were deducted by the Custodian on the Treasury interest as received by him, first at the rate of 1% and later at the rate of 2% (R. 11). This seems to have represented a secret deduction which was never communicated by statement or otherwise to the respondent or Hiag by either the Treasurer of the United States or the Alien Property Custodian, and only in or about the year 1932 was discovered by counsel for the respondent (R. 11), after the original bill had been filed to recover the amounts at that time known to have been deducted and retained in connection with releases under the Winslow and War Claims Acts.

These amounts so retained and withheld were deposited by the Custodian either in his account with the Treasury Department or in a special fund then kept at the Commercial National Bank, Washington, D. C. (R. 12). From these two funds were deducted the running expenses of the Custodian's office, and also amounts to pay to American, neutral and allied nationals the amounts of administration fees which had previously been improperly charged against, and deducted from, their erroneously seized property (R. 4 and 5). As of December 31, 1930, the aggregate of the two funds amounted to $4,143,573.27 (R. 5); as of December 31, 1931, they amounted to $4,148,396.53 (Annual Report of the Alien Property Custodian for 1931); as of December 31, 1932, they amounted to $4,-124,238.23 (Annual Report of the Alien Property Custodian for 1932); and as of December 31, 1933, this fund held solely in the Treasury amounted to $4,035,-614.05 (Annual Report of the Alien Property Custodian for 1933).

It appears that in 1923 all of the seized shares of stock belonging to the respondent and Hiag were actually converted into cash (R. 27-29), so that after that period virtually the only services rendered by the offices of the Custodian and Treasurer of the United States were to deposit the cash in an account with the Treasury Department, to receive Treasury interest therefrom (R. 11), and finally to release to the claimants in cash the amounts determined to be due them after such auditing, etc., as might be necessary in that connection.

The respondent by its bill, as amended, sought recovery under the Trading with the Enemy Act, as amended, of the amounts which it claims were illegally

withheld and deducted from its property and that of Hiag—namely $69,888.83 plus interest, made up as follows:

	Respondent	Hiag	Total
Winslow Act.....	$700.00	$700.00	$1,400.00
War Claims Act.....	39,599.00	20,747.52	60,346.52
Undisclosed commissions on Treasury interest	5,841.70	2,300.00	8,142.31
Total			$69,888.83

(R. 10 and 11)

ARGUMENT.

1. The only point involved in this case has already been definitely settled by this Court.

By Section 24 of the Trading with the Enemy Act, 42 Stat. 1511, 1516, the Custodian "is authorized * * * to pay the necessary expenses incurred by him * * * in securing the possession, collection or control * * * or in protecting or administering" the enemy property. While this language is clear in authorizing the Custodian to deduct only the "necessary expenses" incurred by him in connection with the management of specific property, he assumed it to mean that he could in all cases make the same flat rate deduction as an administration expense, irrespective of the simplicity or complexity of the cases or the necessity for the deduction. This interpretation by the Custodian was declared to be erroneous by this Court in the case of *Escher* v. *Woods*, 281 U. S. 379. In that case, to which we shall hereafter refer as the *Escher* case, brought by

a Swiss citizen for the recovery of administration fees deducted and withheld, this Court speaking through Mr. Justice Holmes, at pages 383, 384 and 385, said:

> "To sustain the deduction the respondents rely upon the Trading with the Enemy Act of October 6, 1917, c. 106, §12, 40 Stat. 411, 423, amended by Act of March 28, 1918, c. 28, 40 Stat. 459, 460 (50 U. S. C. A. Appendix §12), by which the Alien Property Custodian is 'vested with all of the powers of a common-law trustee' in respect of all property, 'other than money', received by him under the Act and may exercise any powers appurtenant thereto 'as though he were the absolute owner thereof'. They also invoke Executive Order, February 26, 1918 (No. 2813) that the Custodian 'may pay all reasonable and proper expenses which may be incurred in or about securing possession or control of money or other property * * * and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs.' Also Order of July 16, 1918 (No. 2916), of which it is necessary to mention only the direction that the expenses 'shall be limited to and paid or satisfied out of only the property or business or undertaking involved and out of which' the expenses shall have arisen provided that if the property or assets of the business are insufficient, they may be satisfied out of other property 'received from, or as the property of, the same enemy.' Under these Acts and Orders the Custodian has adopted the course followed in this case and it is further urged that his conduct is tacitly ratified by the later Acts of March 4, 1923, c. 285, adding §24 to the original Act, which embodies so much of the above orders as limits the liability to expenses incurred in respect of the same property, and to the property concerned or other prop-

erty of the same person, 42 Stat. 1511, 1516 (50 U. S. C. A. Appendix, §24); and May 16, 1928, c. 580, 45 Stat. 573, 574, that 'all expenses of the office * * * including compensation of the Alien Property Custodian * * * shall be paid from interest and collections on trust funds and other properties under the control of such Custodian.' It will be observed that the charge for the expenses of the office is upon interest and collections only; that is, a deduction from income for the cost of earning it, not as in the present case, a charge upon the corpus of the fund.

"*We do not perceive even in 1928 anything that clearly suggests treating the property in the hands of the Custodian as one great trust, to be called on to bear the expenses of administration, as one homogeneous whole. On the contrary, the directions are explicit that the expenses charged to a given property are those incurred in getting or protecting it, or at least others similarly due from the same owner.* But, and this is the main thing, all of these provisions naturally are interpreted to refer to property that the Custodian is entitled to hold. It would be extraordinary if the charges incident to a seizure that the law did not intend the Custodian to make and a possession that the law requires him to surrender, were to be imposed upon the owner whose interests were sacrificed up to the moment of restitution. It seems to be going far enough to require him to bear the loss that he has suffered, without compelling him to pay the Government for its outlay in doing him harm." (Italics ours.)

It is evident, as alleged in the bill, as amended, that in making the flat rate deductions for administration expenses applicable alike to all former enemy claimants irrespective of the simplicity or complexity of the administration of their property, the Alien Property

Custodian has treated former enemy property in his hands as one great trust to be called on to bear the expenses of administration as one homogeneous whole (R. 6), exactly contrary to the determination of this Court as above quoted.

The petitioners urge that, this Court having decided the *Escher* case on two grounds, the second of which was sufficient to support the decision, should now reverse the first ground of its decision.

In the instant case the Court of Appeals, after discussing the *Escher* case and quoting from the decision of this Court, concluded its opinion by stating:

> "Whatever may have been the practice of the Alien Property Custodian in making flat-rate deductions for administrative expenses applicable alike to all enemy claims, irrespective of the simplicity or complexity of the administration of their property, the action of the Custodian in treating all enemy property as a single trust, to bear the expense of administration as one homogeneous whole, is clearly contrary to the holding of the Supreme Court in the above case."

This opinion without further comment on our part would seem to sufficiently answer the point urged by the petitioners, namely, that a practice of flat-rate deductions had grown up in the Custodian's office; and that Congress had by subsequent amendments of the Trading with the Enemy Act ratified such practice so as to make such practice determinative of the meaning of the language of Section 24. Such practice might be an element to be considered in determining the meaning of an ambiguous statute, but this Court has already determined the meaning of the statute free from any ambiguity. Therefore, it seems to us that any reference to the practice is entirely beside the point.

It will be noted that in paragraph 2 of the petitioners' argument this Court is asked to completely disregard and, in effect, reverse the first ground of its decision in the *Escher* case. The Court had before it in that case all of the Executive Orders and all the provisions of the Trading with the Enemy Act, as amended, now urged. Also the Custodian's practice, which we feel is quite beside the point, was allegedly brought to Congress' attention during the years 1926 and following. The *Escher* case was decided in 1930. However, unless this Court expressly reverses the first ground of its decision in the *Escher* case above quoted, the question here presented must be considered as finally and definitely settled by that decision.

In Footnote 2 on page 9 of the petition reference is made to the Treaty of Peace between the United States and Germany proclaimed November 14, 1921 (42 Stat. Pt. 2-1939). Despite the fact that the Trading with the Enemy Act had been five times amended [1] since the ratification of the Treaty and the right to sue had been preserved thereby, it was urged in the courts below that the provisions of the Treaty forbade former alien enemies from prosecuting suits of this type, which are suits for the recovery of unreturned property. Although this point was vigorously presented to both courts below, decisions were rendered in each instance favorable to the respondent.

2. Importance of case.

As an inducement for the granting of the writ herein the petitioners urge, first, the possibility that unless

[1] NOTE: The amendments to the Trading with the Enemy Act above referred to are as follows: December 21, 1921, 42 Stat. 351; December 27, 1922, 42 Stat. 1065; March 4, 1923, 42 Stat. 1511; May 7, 1926, 44 Stat. 406; and March 10, 1928, 45 Stat. 254.

this case is heard and reversed the respondent and others similarly situated will "presumably" be entitled to recover the full amounts claimed. This respondent is claiming the right to a return of all administration deductions, as it has no knowledge of what was the "necessary" expense or the means of ascertaining the same. While the Custodian kept no exact records of time spent on specific claims, it is unthinkable that in final analysis from records available in his office he would not be able to reconstruct, at least in great measure, the approximate costs of administering the large trusts. These are the only ones, for practical reasons, which are likely to be the subject of claim or litigation. From a practical standpoint, it is clear that in the large volume of small claims the flat-rate deductions would equal or, possibly, be less than the actual necessary expenses incurred in seizing and administering the particular property.

Secondly, the petitioners urge that unless this case is heard and reversed, Congress will have to appropriate large sums to satisfy claims and pay future expenses of the Custodian's office. The Custodian as of December 31, 1933, still retained in his administration fund $4,035,614.05, according to his Annual Report for the year 1933, page 3. This, indeed, is a very comfortable amount from which to reimburse the larger claimants, who might sue or who might press their claims, for the amounts of excessive deductions and, also, to keep the Custodian's office running for a long period of time. This report shows, at page 5, that it would cost, at the outside, $275,000 a year to continue that office on its present scale in order to administer property still subject to active administration of the value of less than $12,000,000 ($67,181,234.75 less $55,458,918.56 now held

pending its "covering in" at the Treasury Department and requiring no further administration, pages 2 and 3 of said report), for which he is now employing some seventy-five persons, according to page 7 of the report. Even this amount of about $12,000,000 includes unclaimed property of substantial value (see page 4 of the report) which would not seem to require any active administration.

The Custodian's own report, therefore, would indicate that the probability of a long continuance of his office with "the appropriation by Congress of large sums of money", if this case is not heard and reversed, can not be taken as a serious threat.

It is submitted, therefore, that upon analysis the two reasons advanced by these petitioners in support of the petition for the writ utterly fail to demonstrate the importance of this case.

Conclusion.

It is respectfully submitted that the petition for writ of certiorari should be denied.

RICHARD H. WILMER,
Counsel for Respondent.

(4678-C)

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 795.

UREY WOODSON, as Alien Property Custodian of the United States, and W. A. JULIAN, as Treasurer of the United States,

Petitioners,

v.

DEUTSCHE GOLD UND SILBER SCHEIDENSTALT VORMALS ROESSLER, a Corporation, Frankfurt a/Main, Germany,

Respondent.

BRIEF FOR THE RESPONDENT.

RICHARD H. WILMER,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 795.

UREY WOODSON, as Alien Property Custodian of the United States, and W. A. JULIAN, as Treasurer of the United States,

Petitioners,

v.

DEUTSCHE GOLD UND SILBER SCHEIDENSTALT VORMALS ROESSLER, a Corporation, Frankfurt a/Main, Germany,

Respondent.

BRIEF FOR THE RESPONDENT.

Opinions Below.

The Supreme Court of the District of Columbia rendered no written opinion. The opinion of the Court of Appeals, District of Columbia, is reported in 68 F. (2d) 391, and may also be found in LXI Washington Law Reporter, p. 896.

Jurisdiction.

The decree of the court below was entered November 20, 1933 (R. 109). The petition for writ of certiorari was filed

February 7, 1934, and was granted March 19, 1934 (R. 113). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Questions Presented.

1. Whether or not the Alien Property Custodian was authorized under the Trading with the Enemy Act, as amended, to deduct and retain from seized property of a former enemy, to cover administration expenses, an amount computed at a fixed percentage applicable alike to the property of all other similar claimants and bearing no relation to the actual and necessary cost of the work done or services performed in securing the possession, collection or control of the particular claimant's property or in protecting or administering the same.

2. Whether the Independent Offices Appropriation Act of 1935, passed over the veto of the President March 28, 1934, precludes recovery by the respondent of so much of the administration fees previously deducted and withheld by the Alien Property Custodian as shall be found to have exceeded the necessary expenses incurred in securing the possession, collection or control or in protecting or administering the property of the respondent and Holzverkohlungs Industrie Aktiengesellschaft.

Statutes Involved.

The statutes involved are set forth in Appendix A, hereto.

Statement.

While the facts as stated in the petition are correctly stated so far as they go, there are certain other facts to which we desire to call the Court's attention. Also, in some instances it is believed that a slight elaboration of the facts stated may be helpful.

In originally securing the possession, collection and control of the property of the respondent and Holzverkohlungs

Industrie Aktiengesellschaft, hereinafter referred to as Hiag, and in protecting and administering the same, the Custodian had actually paid out by way of fees, commissions, costs, attorneys' fees, etc., $40,251.74 in so far as the property owned by the respondent was concerned, and $13,608.12 in so far as the property owned by Hiag was concerned (R. 9), a total of $53,859.86. These expenses are detailed in Exhibits A and B, respectively, to the petitioners' answer (R. 27-29). The amount of these expenditures the respondent is not seeking to recover in this suit (R. 9). In passing, it is important to note that these actual expenses regarded as necessary by the Custodian were charged against, and were paid out of, the properties contained in the specific trusts of the two claimants in the amounts actually incurred and were not charged against the general administration costs of the Custodian's office. In principle this feature was dealt with in the manner which we contend herein was proper and should have been followed in the case of all other expenses incurred.

When property was released to the respondent and Hiag under the Winslow Act of 1923 and the Settlement of War Claims Act of 1928 there were deducted 1% and 2% administration fees. From the property of the respondent there had been retained and withheld at the time this suit was instituted, as purporting to represent 1% and 2% administration fees, $39,599, and from the property of Hiag the amount of $20,747.52, in the aggregate $60,346.52 (R. 10). The record erroneously totals these amounts as $260,346.52 (R. 10).

In addition thereto the Custodian also deducted from Treasury interest earned after March 4, 1923, by the respondent's invested cash, the sum of $5,841.70, and from the Treasury interest earned by Hiag's invested cash $2,300.61, a total of $8,142.31 (R. 11). These amounts were deducted by the Custodian on the Treasury interest as received by him, first at the rate of 1% and later at the

rate of 2% (R. 11). This seems to have represented a secret deduction which was never communicated by statement or otherwise to the respondent or Hiag by either the Treasurer of the United States or the Alien Property Custodian, and only in or about the year 1932 was discovered by counsel for the respondent (R. 11), after the original bill had been filed to recover the amounts at that time known to have been deducted and retained in connection with releases under the Winslow and War Claims Acts.

These amounts so retained and withheld were deposited by the Custodian either in his account with the Treasury Department or in a special fund then kept at the Commercial National Bank, Washington, D. C. (R. 12). From these two funds were deducted the running expenses of the Custodian's office, and also amounts to pay to American, neutral and allied nationals the amounts of administration fees which had previously been improperly charged against, and deducted from, their erroneously-seized property (R. 4 and 5). As of December 31, 1930, the aggregate of the two funds amounted to $4,143,573.27 (R. 5); as of December 31, 1931, they amounted to $4,148,396.53 (Annual Report of the Alien Property Custodian for 1931); as of December 31, 1932, they amounted to $4,124,238.23 (Annual Report of the Alien Property Custodian for 1932); and as of December 31, 1933, this fund held solely in the Treasury amounted to $4,035,614.05 (Annual Report of the Alien Property Custodian for 1933).

It appears that in 1923 all of the seized shares of stock belonging to the respondent and Hiag were actually converted into cash (R. 27-29), so that after that period virtually the only services rendered by the offices of the Custodian and Treasurer of the United States were to deposit the cash in an account with the Treasury Department, to receive Treasury interest therefrom (R. 11), and finally to release to the claimants in cash the amounts determined to be due them after such auditing, etc., as might be necessary in that connection.

The respondent by its bill, as amended, sought recovery under the Trading with the Enemy Act, as amended, of the amounts which it claims were illegally withheld and deducted from its property and that of Hiag — namely $69,888.83 plus interest, made up as follows:

	Respondent	*Hiag*	*Total*
Winslow Act	$700.00	$700.00	$1,400.00
War Claims Act	39,599.00	20,747.52	60,346.52
Undisclosed commissions on Treasury interest	5,841.70	2,300.00	8,142.31
Total			$69,888.83

(R. 10 and 11)

By its bill, as amended, the respondent prayed for an accounting, the appointment of a receiver and other equitable remedies (R. 7 and 8).

Summary of Argument.

I.

The Alien Property Custodian was not authorized under the Trading with the Enemy Act, as from time to time amended, to deduct and retain from property seized from a former enemy under the guise of administration expenses, an amount computed at a fixed percentage applicable alike to the property of all other similar claimants and bearing no relation to the actual and necessary cost of the work done or services performed in securing the possession, collection or control of the particular claimant's property or in protecting or administering the same. This Court has already held in *Escher* v. *Woods*, 281 U. S. 379 (1930), that the directions of Section 24 of the Trading with the Enemy Act as amended are explicit that the expenses chargeable against a given property are those incurred in getting or protecting it, or other property due to the same owner. In other words, each property should bear its own necessary

costs. Hence it follows that any flat-rate charges deducted from the property of any claimant without reference to the necessary expenses incurred are illegal. The statute being clear on this, no practice contrary to the explicit directions of the statute is relevant.

II.

The Independent Offices Appropriation Act for 1935, passed over the veto of the President March 28, 1934, does not deprive the courts of jurisdiction to enter judgment in favor of the respondent in this case. Congress cannot validly and constitutionally deprive former alien enemies of property rights hitherto vested in them. This is not a suit against the United States; but, even if it were so regarded, the statute would be unconstitutional as applied to the facts of this case. By statutory ratification of prior illegal deductions Congress cannot validly and constitutionally deprive respondent of its property or take it without just compensation.

Argument.

I.

The primary point involved in this case has already been definitely settled by this Court.

By Section 24 of the Trading with the Enemy Act, 12 Stat. 1511, 1516, the Custodian "is authorized * * * to pay the necessary expenses incurred by him * * * in securing the possession, collection or control * * * or in protecting or administering" the seized property. While this language is clear in authorizing the Custodian to deduct only the "necessary expenses" incurred by him in connection with the management of specific property, he assumed it to mean that he could in all cases make the same flat-rate deduction as an administration expense irrespective of the simplicity or complexity of the cases or the necessity for the deduction. This interpretation by the Custodian was declared to

be erroneous by this Court in the case of *Escher* v. *Woods*, 281 U. S. 379 (1930). In that case, to which we shall hereafter refer as the *Escher* case, brought by a Swiss citizen for the recovery of administration fees deducted and withheld, this Court speaking through Mr. Justice Holmes, at pages 383, 384 and 385, said:

> "To sustain the deduction the respondents rely upon the Trading with the Enemy Act of October 6, 1917, c. 106, §12, 40 Stat. 411, 423, amended by Act of March 28, 1918, c. 28, 40 Stat. 459, 460 (50 U. S. C. A. Appendix §12), by which the Alien Property Custodian is 'vested with all of the powers of a common-law trustee' in respect of all property, 'other than money,' received by him under the Act and may exercise any powers appurtenant thereto 'as though he were the absolute owner thereof.' They also invoke Executive Order February 26, 1918 (No. 2813) that the Custodian 'may pay all reasonable and proper expenses which may be incurred in or about securing possession or control of money or other property * * * and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs.' Also Order of July 16, 1918 (No. 2916), of which it is necessary to mention only the direction that the expenses 'shall be limited to and paid or satisfied out of only the property or business or undertaking involved and out of which' the expenses shall have arisen provided that if the property or assets of the business are insufficient, they may be satisfied out of other property 'received from, or as the property of, the same enemy.' Under these Acts and Orders the Custodian has adopted the course followed in this case and it is further urged that his conduct is tacitly ratified by the later Acts of March 4, 1923, c. 285, adding §24 to the original Act, which embodies so much of the above orders as limits the liability to expenses incurred in respect of the same property, and to the property concerned or other property of the same person, 42 Stat. 1511, 1516 (50 U. S. C. A. Appendix §24); and May 16, 1928, c. 580, 45 Stat. 573, 574, that 'all expenses of the office * * * including compen-

sation of the Alien Property Custodian * * * shall be paid from interest and collections on trust funds and other properties under the control of such Custodian.' It will be observed that the charge for the expenses of the office is upon interest and collections only; that is, a deduction from income for the cost of earning it, not as in the present case, a charge upon the corpus of the fund.

"*We do not perceive even in 1928 anything that clearly suggests treating the property in the hands of the Custodian as one great trust, to be called on to bear the expenses of administration, as one homogeneous whole. On the contrary, the directions are explicit that the expenses charged to a given property are those incurred in getting or protecting it, or at least others similarly due from the same owner.* But, and this is the main thing, all of these provisions naturally are interpreted to refer to property that the Custodian is entitled to hold. It would be extraordinary if the charges incident to a seizure that the law did not intend the Custodian to make and a possession that the law requires him to surrender, were to be imposed upon the owner whose interests were sacrificed up to the moment of restitution. It seems to be going far enough to require him to bear the loss that he has suffered, without compelling him to pay the Government for its outlay in doing him harm." (Italics ours.)

It is evident, as alleged in the bill, as amended, that in making the flat rate deductions for administration expenses applicable alike to all former enemy claimants irrespective of the simplicity or complexity of the administration of their property, the Alien Property Custodian has treated former enemy property in his hands as one great trust to be called on to bear the 'expenses' of administration as one homogeneous whole (R. 6), exactly contrary to the determination of this Court as above quoted.

The petitioners urge that, this Court having decided the *Escher* case on two grounds, the second of which was sufficient to support the decision, should now reverse the first ground of its decision.

In the instant case the Court of Appeals, after discussing the *Escher* case and quoting from the decision of this Court, concluded its opinion by stating:

> "Whatever may have been the practice of the Alien Property Custodian in making flat-rate deductions for administrative expenses applicable alike to all enemy claims, irrespective of the simplicity or complexity of the administration of their property, the action of the Custodian in treating all enemy property as a single trust, to bear the expense of administration as one homogeneous whole, is clearly contrary to the holding of the Supreme Court in the above case."

This opinion without further comment on our part would seem to sufficiently answer the point urged by the petitioners, namely, that a practice of flat-rate deductions had grown up in the Custodian's office; and that Congress had by subsequent amendments of the Trading with the Enemy Act, and the Independent Offices Appropriation Acts ratified such practice so as to make such practice determinative of the meaning of the language of Section 24. Such practice might be an element to be considered in determining the meaning of an ambiguous statute, but this Court has already determined the meaning of the statute free from any ambiguity.

It is a rule beyond doubt that even long-continued administrative interpretation of a statute, though the statute has been amended and reenacted by Congress without change, will not prevail where such interpretation is manifestly incorrect. *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740 (1930); *Merritt* v. *Cameron*, 137 U. S. 542 (1890); *United States* v. *Tanner*, 147 U. S. 661 (1893); *United States* v. *Missouri Pac. R. Co.*, 278 U. S. 269 (1928); *Norwegian Nitrogen Products* v. *United States*, 288 U. S. 294 (1933)—and cases cited. The cases cited by the petitioners carefully distinguish and recognize this principle. Therefore, it seems to us that any reference to the practice is entirely beside the point. The Court had before it in the

Escher case all of the Executive orders, all the provisions of the Trading with the Enemy Act, as amended, and all of the Independent Offices Appropriation Acts now urged as supporting an allegedly recognized practice. The *Escher* case was decided in 1930. But even in his practice the Custodian has not been totally consistent, for he has charged against the trusts of the two claimants, and not against the general administration fund, $53,859.86 (R. 9) as necessarily incurred expenses the amounts of fees, commissions, costs, attorneys' fees, etc., not here sought to be recovered, and then on the other hand has imposed on top of that 1% and 2% deductions without reference to actual or necessary cost.

However, unless this Court expressly reverses the first ground of its decision in the *Escher* case, above quoted, the primary question here presented, we submit, must be considered as finally and definitely settled by that decision.

II.

The Independent Offices Appropriation Act for 1935 does not deprive the courts of jurisdiction to enter judgment in favor of respondent.

Since this case was decided by the Court of Appeals, District of Columbia, and in fact since *certiorari* was granted by this Court, there was passed over the veto of the President the Independent Offices Appropriation Act for the fiscal year ending June 30, 1935 (Public No. 141) containing the following provision:

> "No claim shall be filed * * * nor shall any suit be instituted or maintained against the Alien Property Custodian or the Treasurer of the United States, or the United States, under any provisions of law, by any person who was an enemy or ally of enemy as defined in the Trading with the Enemy Act, as amended, * * * nor judgment entered in any such suit heretofore or hereafter instituted, for the recovery of any deduction or deductions, heretofore or hereafter

made by the Alien Property Custodian from money or properties, or income therefrom, held by him or by the Treasurer of the United States hereunder, for the general or administrative expenses of the office of the Alien Property Custodian, * * *."

It is naturally contended by the petitioners that this Act prohibits the rendition of any judgment in favor of the respondent in this case. While no doubt designed to prohibit the maintenance of this and other similar suits now pending in the courts, this Act is ineffective to accomplish any such aims. At best it represents an unfair and unconstitutional attempt to abolish by intervening retrospective statute a right which the courts below have held to exist in these aliens who are former enemies. Certain it is that intervening legislation interfering with orderly litigation should not be looked upon with favor and particularly where it is enacted for the sole purpose of depriving our former enemies of rights held by courts to exist in their favor under prior carefully-considered legislation.

It is urged by the petitioners that the Independent Offices Appropriation Act for 1935 *pro tanto* repeals Section 9(c) of the Trading with the Enemy Act whereby any person entitled to recover property under Section 9(b), which was extended to include former enemies, might bring suit to recover property if the same were not returned to them. In view of the fact, as we will show, that the new legislation results in the deprivation and taking of property contrary to the provisions of the Fifth Amendment of the Constitution, this new legislation is of no force and effect whatsoever. Accordingly, there is no repeal *pro tanto* of Section 9(c). However, even if the procedural feature could be separated from the ratification feature and upheld as valid where suit was properly commenced long ago, it would nevertheless follow that the present suit could still be maintained, if not under Section 9(c), then under the general equity jurisdiction of the court. *Amy v. Supervisors*, 78 U. S. 136 (1871). In filing this suit, the respondent in-

voked not only the statutory special jurisdiction of the court but the general equity jurisdiction as well. (R. 2.)

While not urging strongly that the Treaty of Berlin proclaimed November 14, 1921, (42 Stat. Pt. 2, 1939, 1943) would in any event bar this suit, the petitioners in foot-note 3 on page 16 of their brief refer to the provisions of this treaty as ratifying every action taken or to be taken with respect to the seized property, including deductions and expenses. Despite the fact that the Trading with the Enemy Act had been five times amended[1] since the proclamation of the treaty and the right to sue had been preserved thereby, it was vigorously urged in the courts below that the provisions of the treaty forbade former alien enemies from prosecuting suits of this type, which are suits for unreturned property. In each instance the court rendered a determination favorable to the respondent. While it is quite apparent from the treaty itself that it was not intended to cover any such situation as here presented, the subsequent amendments of the Trading with the Enemy Act preserving the right to sue would in any instance be compelling. *The Cherokee Tobacco*, 11 Wall. 616 (1871); *United Shoe Mach. Co.* v. *Duplessis Shoe Mach. Co.*, 155 Fed. 842 (C. C. A. 1st, 1907). See also *United States* v. *Yuginovich*, 256 U. S. 450 (1921); *United States* v. *Tiger*, 19 F. (2d) 35 (C. C. A. 8th, 1927).

1. THIS SUIT IS NOT A SUIT AGAINST THE UNITED STATES.

This action is not in any sense an action against the United States. The government is not a party to the suit nor does it have any interest in it. The petitioners cite at page 45 of their brief the case of *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591 (1924) and that of *von Bruning* v.

[1] The amendments to the Trading with the Enemy Act above referred to are as follows: December 21, 1921, 42 Stat. 351; December 27, 1922, 42 Stat. 1065; March 4, 1923, 42 Stat. 1511; May 7, 1926, 44 Stat. 406; and March 10, 1928, 45 Stat. 254.

Sutherland, 29 F. (2d) 631 (App. D. C. 1928) for the categorical proposition that any suit against the Custodian is one against the United States. There is no such general rule and the cases cited are not authority for any such rule. The *Banco Mexicano* case involved a suit by the liquidators of the Mexican bank against the Alien Property Custodian to recover the amount of a debt owed to that bank by the Deutsche Bank, certain assets of which held by Guaranty Trust Company had been seized and taken over by the Alien Property Custodian. There was no question but that the Custodian in seizing and holding the property was acting entirely within the scope of his authority under the Trading with the Enemy Act. Furthermore, the United States had at that time an undetermined interest in the property. Section 12 of the Trading with the Enemy Act, even as originally adopted, provided that—

> "After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, *shall be settled as Congress shall direct* * * *." (Italics ours.)

The government, therefore, had taken a definite control and authority over the property until later it directed its disposition, which it had not done at the time the suit was brought. Furthermore, and this is the main point of the case, the debt sued upon did not arise with reference to the money or property held by the Custodian, and in the seized property the Mexican bank had no vested or other interest.

The *von Bruning* case involved an action by a former alien enemy against the Alien Property Custodian to recover for rent and damages to a house properly seized by the Alien Property Custodian and used as an office by him during 1918-1920. The Alien Property Custodian in occupying the house was clearly acting as agent of the United States. And, also, from all that appears from the case, he was acting within the scope of his authority. This case

did not involve the right of recovery of seized property and damages, a right to which was not covered by statute. The case may, therefore, in these respects be clearly distinguished from the instant case. The *Banco Mexicano* and the *von Bruning* cases are thus fundamentally different from the instant case and can not be considered as authority in the present action.

There are three reasons, any one of which, entirely independently of the others, necessitates the conclusion that the present action is not one against the United States. They are as follows:

(a). *The Alien Property Custodian no longer holds the moneys, for the return of which this suit is brought, as an agent of the United States, but now holds such moneys for the exclusive benefit of the respondent.* The capacity of the Alien Property Custodian was definitely changed by the amendment to the Trading with the Enemy Act approved March 4, 1923, known as the Winslow Act, and by the Settlement of War Claims Act of 1928, in so far as that capacity relates to property, of which return is authorized by those Acts.

Section 12 of the Trading with the Enemy Act, among other things, vests the Alien Property Custodian with the powers of a trustee. The language of the section is as follows:

> "The alien property custodian shall be vested with all the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, * * *."

The property which came into his possession in this instance was stock. The Custodian, therefore, held the stock and later the proceeds thereof upon its sale, as a trustee. As hereinafter shown, prior to the Winslow Act of 1923,

and the Settlement of War Claims Act of 1928, the beneficiary of the property was the alien owner, but the full control and power of ultimate disposition was at least conditionally in the United States. On the enactment of these statutes, however, the United States relinquished its power of disposition over the property. It ceased to have any interest therein, for by the War Claims Act it set aside the seized property for the former enemy owners. They were given the right to immediate possession of their property upon submitting proper proof of ownership and consent to the 20% temporary withholding. From their property the Custodian was authorized to withhold only 20% (temporarily), taxes, and the amount of "necessary expenses". While it seems clear that upon the enactment of the War Claims Act on March 10, 1928, the United States gave up all its interest in the seized property, certain it is that the property of respective claimants revested in them not later than the dates of allowance of their claims. The bill, as amended, shows the claims here involved were allowed and the release of the claimants' property commenced early in 1929 (R. 3 and 4). By this suit the respondent is endeavoring to recover the balance of its property in which it has a definite vested interest.

From the early days of the custodianship of alien property, the government both from a legislative and administrative standpoint gave clear indications of its intentions to ultimately return seized property to the former owners and thus to comply with long established international usage. As a preliminary to such return, the seized property together with increments thereon was placed in separate trusts of the respective claimants when identified as their property. This procedure is set forth at some length in *Starchler* v. *Sutherland, et al.*, 19 F. (2d) 999 (E. D. N. Y. 1927), and footnotes thereto.

The fact that the respondent's property was at no time confiscated by the Custodian but at most the ultimate dis-

position thereof was held in abeyance was recognized in the case of *Chemische Fabrik von Heyden Aktiengesellschaft* v. *Tait*, 64 F. (2d) 295 (C. C. A. 4th 1933), *certiorari* denied October 9, 1933, 54 S. Ct. 65. This case involved a suit to recover income and profits taxes assessed against the plaintiff corporation for the year 1919. The plaintiff corporation owned substantially all of the stock of a New Jersey corporation which had been seized by the Alien Property Custodian in 1918 and sold by him in 1919. The tax was computed under Sec. 24(b) of the Trading with the Enemy Act upon the excess of the net proceeds of the sale over the value of the stock on March 1, 1913. The balance of the funds, less 22 per cent, thereof, was paid to the plaintiff corporation by the Alien Property Custodian in 1929 under the Settlement of War Claims Act of 1928. The plaintiff contended that no income tax could be lawfully imposed on this fund, because the plaintiff was an alien enemy during the year 1919, and then had no interest whatever in the property, which was absolutely owned by the United States and, therefore, not subject to tax. The court, in affirming the decision of the District Court, upheld the payment of these taxes. The opinion of the Circuit Court of Appeals was based upon the idea that some property interest remained in the plaintiff, even though the Alien Property Custodian had seized this property in 1918. The language of the District Court, 58 F. (2d) 814, at page 818, is even clearer on this point:

> "It is clear that the plaintiff's property was not absolutely confiscated while held by the Alien Property Custodian. It is true that it had no right or title therein which he could then enforce until authority was given by the further act of Congress, but the substantial situation in expectation was that its rights would probably be restored in some form or to some extent when it was determined by Congress what disposition should finally be made of the property."

The fact that the Settlement of War Claims Act of 1928 and the Winslow Act of 1923 merely determined what had theretofore been an undetermined right of the respondent to the funds in question, and did not constitute a "gift" of that property by Congress to the respondent is also established by the case of *Commissioner of Internal Revenue v. Stearns*, 65 F. (2d) 371 (C. C. A. 2d, 1933), *certiorari* denied October 16, 1933, 54 S. Ct. 90. There the Alien Property Custodian on January 3, 1918, had seized property belonging to one Hieronymus, the taxpayer's testator who was a German citizen and who died on December 23, 1918. The property was returned to Stearns, the administrator c. t. a. of the estate of Hieronymus towards the end of 1928. The question was whether the tax "base" for the purpose of determining gain or loss in the event of sale should be fixed as of the date of the return of the property or as of the date of the death of the former owner. Had not the property been seized by the Custodian the law would have required it to be fixed as of the date of death. Stearns contended it should be fixed as of the date of the return of the property. The Circuit Court of Appeals, holding otherwise, stated as follows at page 374:

> "There remains the question of the proper time at which to fix the 'base'. Had the Alien Property Custodian not intervened, the second sentence of section 113 (a) (5), Revenue Act 1928, 26 U. S. C. A. § 2113 (a) (5), would have fixed it as of December, 1918, when the testator died. But the property was already in the Custodian's possession, seized by him nearly a year before. If the seizure had been a confiscation, and the return by Congress a cession back of property of the United States, Stearns, who as administrator was 'the decedent's estate', would have acquired nothing from the 'decedent'; the property would have come from the United States. However, the seizure was not a confiscation. True, the power to seize rested upon the constitutional power of Congress to make 'captures on land and water', clause 11, § 8, art. 1, U. S. Constitution; Stoehr v. Wallace, 255 U. S. 239, 242, 41 S. Ct.

293, 65 L. Ed. 604. But Congress was not bound to go the whole way; it might sequester without confiscating. The frame of the act did indeed leave the meaning somewhat uncertain. Apparently seizure changed 'title'; it was the substitute for the voluntary act by which the property might be 'conveyed, transferred, assigned, delivered, or paid over'. Section 7 (c), Trading with the Enemy Act, as amended by Act Nov. 4, 1918 (50 U. S. C. A. Appendix, § 7 (c). The Custodian had the powers of 'a common-law trustee', § 12, as amended by Act March 28, 1918, § 1 (50 U. S. C. A. Appendix § 12), which cannot without undue strain be supposed to go without the legal title on which such powers ordinarily depend. But even though we grant so much, the beneficial interest need not pass, and section 12 itself shows that there was no purpose at the time that it should; for it was enacted that all enemy claims to 'property received and held * * * shall be settled as Congress shall direct'. No doubt the power to confiscate was held in reserve, but it was not exercised and might never be. In fact it never was, except in small part. That this was the general intent, the reports of the two Houses amply disclose. House Reports, 83; Senate Reports, 113; 65th Congress; 1st Session. Such was the general understanding. 'Post-War International Law', John Bassett Moore, 27 Col. L. Rev. 400, 408. The contrary would have violated international usage of at least one hundred years."

The decision of this Court in the case of *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1 (1926), is sometimes cited in support of the contention that the property seized under the Trading with the Enemy Act was confiscated. We do not believe this to be the intent of that decision, nor do we believe that counsel for petitioners in this case so contend, although they refer to the *Chemical Foundation* case in their brief, for only recently before this Court in a brief for the respondent in opposition to the petition for writ of *certiorari* in the case of *Stearns* v. *Helvering*, No. 381, October Term 1933, referred to and quoted from above, the Solicitor General, in referring to the question whether

or not the property involved in that case had been acquired as of the date of death of the alien enemy owner or when it became releasable in 1928, stated as follows at pages 5 and 6:

> "* * * Petitioner argues that it was acquired from the Alien Property Custodian and therefore comes within the third sentence of Section 113(a) (5) which refers to all other cases than those covered by the first two sentences 'if the property was acquired either by will or by intestacy.' (Pet. 8) We think it clear that the property was not acquired from the Alien Property Custodian or from the United States. As pointed out by the court below, the seizure by the United States was not a confiscation. The beneficial interest was not taken by the United States and it never was the intention of the Government to confiscate property of enemy aliens. The seizure was no more than a conservation to protect the property, *pendente bello*. Probate and administration in the meantime were forbidden and control and enjoyment were suspended. But the Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended (U. S. C. Ann., Title 50, Appendix, Sec. 9 (d) and (g)), itself recognized that property in the Custodian's possession should, upon the enemy's death, devolve as though it had not been seized."

The report of the Committee on Finance of the Senate (70th Congress, First Session, Report No. 273)[2] reporting the Settlement of War Claims Act of 1928, throws much light on this where at pages 12-13 it is said:

> "The text of the trading with the enemy act as originally enacted, the reports of the committees accompanying the bill, the discussion on the floor of both Houses of Congress, and numerous court decisions under the original act, clearly indicate that the act contemplated sequestration rather than confiscation. The

[2] The quoted portion of this report closely follows the similar report of the Committee on Ways and Means, dated December 15, 1927, pages 5 and 6.

amendment of March 28, 1918, however, broadened the powers of the Alien Property Custodian so as to include the right to manage or sell the property 'as though he were the absolute owner', and in the so-called Chemical Foundation case decided by the Supreme Court on October 11, 1926, the Supreme Court held that when any of the property was sold the former enemy owners were deprived of all rights in the property and in the proceeds derived from the sale. Though it was unnecessary for the purposes of this particular decision, the language of the court is broad enough to be open to the construction that the seizure of property under the authority of the trading with the enemy act, as amended, together with the applicable treaty provisions, deprived the owner of all rights, whether or not the property was sold, and that the property was virtually confiscated.

"It is to be noted, however, that even if the property should be held to have been confiscated (under the dictum of this decision), in spite of the clear intent of Congress to the contrary, Congress nevertheless has retained at all times absolute authority over this property and could at any time not only return it to the original owner but declare it to be held for the benefit of and for ultimate return to the original owner. This is apparently just what Congress did under the terms of the Winslow Act in providing that $10,000 of the principal shall be returned to each individual owner, and that thereafter the earnings or interest on the property remaining in the hands of the Alien Property Custodian shall be paid to the owner annually up to the sum of $10,000. So that notwithstanding the undoubted power of Congress to confiscate, reaffirmed in the Chemical Foundation case, Congress not only has refused to exercise that power up to the present time but has clearly by legislation asserted its policy to be the very contrary of confiscation.

"It is fair to say that the primary reason for not returning all the alien property at the time of the adoption of the Winslow Act was that Congress was under a duty to retain sufficient property as security until the German Government should make adequate provision for the settlement of the claims of American nationals against Germany and its nationals."

Other sections of the Trading with the Enemy Act incorporated by the War Claims Act show how completely the government divorced itself from any interest in the seized property. By Sec. 30, added to the Trading with the Enemy Act by Sec. 15 of the War Claims Act, it is provided that any property returnable under Sec. 9(b) or (n) of the Trading with the Enemy Act, which includes property of former enemies, shall be subject to attachment. By Sec. 24(b), added to the Trading with the Enemy Act by Sec. 18 of the War Claims Act, it is provided that income, war-profits, excess profits, or estate taxes imposed by any act of Congress shall be computed as if the property had not been seized by the Custodian but had been held all the time by the aliens. By Sec. 9(m), added to the Trading with the Enemy Act by Sec. 14 of the War Claims Act, it is provided that claimants of designated classes before receiving their property must "consent to a postponement of the return of an amount equal to 20 per centum" thereof, the amount so deducted to "be returned to the persons entitled thereto as provided in subsection (f) of section 25". The latter subsection fixed the relative position of payment of the 20 per cent amounts out of German reparations. By Sec. 25(e), added to the Trading with the Enemy Act by Sec. 10 of the War Claims Act, the Secretary of the Treasury was directed to issue to the Custodian 5 per cent interest bearing certificates representing such 20 per cent deductions and also non-interest bearing certificates representing the claimants' interest in the so-called unallocated interest fund, which included accumulated interest derived prior to March 4, 1923, from invested cash of former enemies as to which it had been formerly held former enemies had no right of recovery. By Sec. 25(d), added to the Trading with the Enemy Act by Sec. 10 of the War Claims Act, it is provided that unclaimed property or property claimed without acceptable proof of ownership shall be held to be owned by the German Gov-

ernment and the amount thereof credited upon the final payment due by the German Government to the United States on account of the awards of the Mixed Claims Commission to various claimants. Thus, in no event has the United States Government an interest in the property herein claimed by the respondent. This was clearly conceded in the court below, where in the brief of the present petitioners it was stated at pages 29 and 30:

> "If, upon the final winding up of the Custodian's office, it should appear that the aggregate amount deducted from each trust exceed the actual expenditures of his office in administering said property the balance will be returned pro rata to the several trusts and distributed to the owners thereof. Thus only the *actual* cost of administering said property will have been met by the charges imposed upon such property pursuant to the legislative authority given the Alien Property Custodian by Congress."

It is clear, therefore, that after the enactment of the War Claims Act the Custodian no longer held the respondent's property for the United States, but only held it for the respondent. He and the Treasurer of the United States are now being sued as the holders of the respondent's property for property which under the law should have been returned and has not been returned. They are not being sued as agents of the United States.[2]

The rule is well settled, by decisions of this Court, that

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[2] In the footnote on page 15 of the petitioner's brief reference is made to the fact that upon the substitution of the new Custodian and Treasurer they were not sued individually. That is unimportant for while they did not make the wrongful and illegal deductions they hold or purport to hold the respondent's property as Custodian and Treasurer, respectively, such titles being descriptive but not being in the least determinative of whether or not this is a suit against the United States. The same situation prevailed in *Houston* v. *Ormes*, *infra*, where David F. Houston and John Burke were properly sued as Secretary of the Treasury and Treasurer of the United States, respectively. That suit was held not to be one against the United States.

when an officer of the government holds property which has been appropriated or set aside for another, a suit against such officer by the person entitled to such property is not a suit against the United States. Thus, in *Houston* v. *Ormes*, 252 U. S. 469 (1920), a suit was instituted against the Secretary of the Treasury and the Treasurer of the United States to establish an equitable lien for attorneys' fees upon a fund appropriated by Congress to pay a claim which had been found by the Court of Claims to be due to one Sanders. The money was in the United States Treasury. The contention of the Secretary of the Treasury and the Treasurer, that the suit was in effect one against the United States, was denied. The Court said at page 472:

> "But since the fund in question has been appropriated by act of Congress for payment to a specified person in satisfaction of a finding of the Court of Claims, it is clear that the officials of the Treasury are charged with the ministerial duty to make payment on demand to the person designated. It is settled that in such a case a suit brought by the person entitled to the performance of the duty against the official charged with its performance is not a suit against the Government. So it has been declared by this court in many cases relating to state officers. * * *"

To the same effect is the case of *Orinoco Co. Ltd.* v. *Orinoco Iron Co.*, 296 Fed. 965 (App. D. C. 1924). There Orinoco Iron Co. sued to establish an equitable claim to money which had been deposited in the United States Treasury under an award made pursuant to an agreement between the United States and Venezuela, settling claims of Orinoco Co. Ltd. against Venezuela. The plaintiff also sought to enjoin the Secretary of the Treasury and the Treasurer of the United States from paying this money to Orinoco Co. Ltd. The contention that the suit was against the United States was expressly overruled by the Court. See also *Mellon* v. *Orinoco Iron Co.*, 266 U. S. 121 (1924).

In the case of *Fischer* v. *Palmer*, 259 Fed. 355 (M. D. Pa.

1919), the Custodian had taken possession of a corporation and the plaintiff's shares of stock therein pursuant to the Trading with the Enemy Act. The plaintiff sued to enjoin the Custodian from selling the assets of the corporation. The contention that the suit was against the United States was overruled by the court. Referring to the Alien Property Custodian, it said, at page 357:

> "The acts committed and threatened by him, as alleged by complainant, were done under right or color of authority of his office, and whether he exceeded his authority or acted without authority as such officer is the question presented by the bill. While it may not be regarded as a suit against the United States, in the light of the distinguishing case of Phila. Co. v. Stimson, Secretary of War, 223 U. S. 605, 32 Sup. Ct. 340, 56 L. Ed. 570, yet being a challenge of his authority to do the things of which complaint is made, it may be maintained, as was done in that case, against the officer of the government, provided this court of this jurisdiction has power to entertain it."

In the case of *Henkels* v. *Sutherland, et al.*, 271 U. S. 298 (1926), Henkels, an American citizen, had a million and a half dollars' worth of stock of a textile company seized by the Alien Property Custodian, who mistakenly thought Henkels was an enemy. The Custodian sold the stock, and invested the proceeds in United States bonds. Henkels sued the Custodian (Miller) and the Treasurer of the United States under §9 of the Trading with the Enemy Act for the return of the proceeds plus the income therefrom both before and after conversion into United States bonds. He was allowed to recover the proceeds and income from the stock before it was converted, but was denied the right to recover income from the United States bonds. He appealed to the Circuit Court of Appeals, which affirmed the decree denying him the income derived from the United States bonds, on the ground that no suit could be maintained against the United States for income on its own bonds. He

appealed to the Supreme Court of the United States, which held that Henkels was entitled to his proportionate share of all the interest earned on moneys invested in United States bonds with which the proceeds of his stock had been commingled. The Court said at page 301:

> "The Government cannot be sued without its consent, and accordingly, it cannot be sued for interest unless it consents to be liable therefor. But the claim here is not for interest to be paid by the United States in the sense of the rule. It is for income, derived from an investment of Henkels' money in obligations of the United States, which income has been actually received by the Treasury and is in its possession to be held, as the proceeds themselves are to be held, for the account of the Alien Property Custodian.
>
> "With enemy-owned property seized by the Custodian, it has been held, the United States may deal as it sees fit, *White* v. *Mechanics' Securities Corporation*, 269 U. S. 283; but it has no such latitude in respect of the property of an American citizen. Whether the Government shall pay interest upon its obligations depends upon Congressional assent; but it cannot confiscate the actual increment of property belonging to a citizen, or the increment of the proceeds into which such property has been converted, any more than it can confiscate the property or its proceeds, without coming into conflict with the Constitution.
>
> "The Government contends that *Angarica* v. *Bayard*, 127 U. S. 251, is to the contrary, and the court below so held. In that case, the suit was for interest or income realized upon the amount of an award in favor of Angarica paid by the Spanish government to the United States. This court, in denying the right of recovery, applied the general rule of immunity from interest, saying (pp. 259-260) that the claim 'is not different in character from what it would have been if, instead of being a claim for increment or income actually received by the United States, it were a claim for interest generally, or for increment or income which the United States would or might have received by the exercise of proper care in the investment of the

money.' Without challenging the correctness of this view as applied to the precise facts of that case, it cannot be accepted as a rule of general application. Especially, it cannot be accepted as applicable here, where the property of a citizen has been mistakenly seized and, by executive authority, after conversion into money, has been invested in government securities. We cannot bring ourselves to agree that a direction to invest such money in securities of the United States, rather than in other securities, may be utilized to enable the Government unjustly to enrich itself at the expense of its citizens, by appropriating income actually earned and received which morally and equitably belongs to them as plainly as though they had themselves made the investment."

Likewise in the case of *Abbott* v. *Sutherland, et al.*, decided in 1927 by the Supreme Court of the District of Columbia in Equity No. 46,434, without reported opinion, it was held that a neutral alien, in this instance a German who became a Pole, might recover such interest. These cases negative the petitioners' conclusion that all suits against the Alien Property Custodian are automatically in effect suits against the United States, for they plainly indicate that, where the Treasurer or Custodian receive and hold actual funds, suits against them for such funds are not suits against the United States.

(b) *The United States has no interest in this action.* As has already been pointed out, the government has relinquished all right, title and interest in and to the moneys the return of which to the respondent has been authorized by Congress. Consequently, the government having parted with whatever interest it had in the property can not revest in itself any interest without a direct reseizure. In the absence of a state of war there would be no authorization for a reseizure. The holding by this Court that the arbitrary deductions made by the Custodian in respect of the moneys returned to the respondent did not truly repre-

sent the "necessary expenses" in administering the property as required by the statute, simply means that each estate is required to bear its own expenses. That after all is eminently the fairest method, and the statute has been held to so prescribe.

The rule is settled that where the United States has no interest in an action, it cannot be considered as a party thereto. Thus, in the *Orinoco* case *supra*, the Court of Appeals stated among other things at p. 972, as follows:

> "The iron company is not seeking in this suit to recover anything from the United States. It is conceded, and properly so, that the money in question is held in the treasury as a trust fund. The government has no claim to it and it makes none. No matter what the outcome of the suit might be, the government would receive none of the fund. For this reason the suit is not against the United States, as argued by the appellants."

It seems clear, therefore, the government has no legal or equitable interest whatever in the outcome of this case.

(c) *The deductions have not been made by the United States nor does the respondent so allege in its bill, as amended.* This action is based on the premise that the deductions in the manner made were not authorized by any act of Congress, and consequently it is entitled to recover the amount thereof subject to proof by the Custodian as to actual necessary charges incurred, if any. The respondent contends, and the *Escher* case supports such contention, that in making the deductions the Custodian acted entirely beyond the scope of his authority, as contained in the present Section 24(a) of the Trading with the Enemy Act. It is well settled that where an officer of the government acts beyond the constitutional scope of his authority, he cannot hide behind the cloak of the United States. *United States* v. *Lee*, 106 U. S. 196 (1882); *Goltra* v. *Weeks*, 271 U. S. 536

(1923); *Philadelphia Co.* v. *Stimson*, 123 U. S. 605 (1911). These cases are discussed *infra*.

The reasons which we have considered, it is submitted, definitely control the present case; a finding that any one of them is applicable in this instance will, we believe, necessitate the conclusion that this action is not an action against the United States.

2. EVEN IF THIS SUIT BE CONSTRUED TO BE IN EFFECT ONE AGAINST THE UNITED STATES, THE INDEPENDENT OFFICES APPROPRIATION ACT FOR 1935 CANNOT LAWFULLY PROHIBIT IT, AS IT WOULD RESULT IN THE DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW, AND THE TAKING THEREOF FOR PUBLIC USE WITHOUT JUST COMPENSATION.

As shown above, long prior to the enactment of the Independent Offices Appropriation Act for 1935, the respondent was possessed of a definite and well-defined property right in and to all moneys, to the return of which the respondent was entitled under the Winslow Act of 1923 and the War Claims Act of 1928. These moneys include, as has been pointed out, the moneys in excess of "necessary expenses" unlawfully withheld by the Custodian. The Winslow Act of 1923 and the War Claims Act of 1928 merely determined the respondent's interest in the property which had been sequestered under the Trading with the Enemy Act as adopted in 1917. As also pointed out above, the respondent always retained an equitable title in the property, which interest was clearly not confiscated by the United States. At most, that title was in abeyance pending the exercise of the power resting in Congress, so that upon the enactment of the Winslow Act of 1923 and the War Claims Act of 1928, the respondent obtained the definite and unequivocal right to receive back that property upon complying with certain steps with which respondent has in every respect complied.

The Independent Offices Appropriation Act for 1935 now boldly purports to deprive the respondent of this property

right without due process of law, and seeks to take the respondent's property for public use without just compensation. Any such action on the part of the United States runs afoul of the Fifth Amendment to the Constitution. Therefore, even if this is to be deemed in effect a suit against the United States, the suit may be maintained and judgment rendered despite the attempted prohibition contained in the Independent Offices Appropriation Act for 1935, for that act attempts to deprive the respondent of its property and take it away without just compensation. In such a case, where a property right is involved, suits may be maintained, if not brought against the sovereign by name, even though in effect against the sovereign and though the sovereign has never consented to be sued. The leading case setting forth this principle is the well-known case of *United States* v. *Lee*, 106 U. S. 196 (1882). An ejectment suit was brought by the alleged owners of certain property known as "Arlington", in the State of Virginia, against certain commissioners of the United States, who had purchased the property at a tax sale and were holding the same for the United States. An attempt was made in that case to set up the defense that the suit was in effect one against the United States, and that as the United States had not consented to be sued, the suit might not be maintained. This Court held that the exemption from being sued where property rights were involved was limited to suits against the United States directly and by name, and that this exemption from suit could not be successfully pleaded in favor of officers and agents of the United States when sued by private persons for property in their possession as such officers. In the course of its opinion this Court states at pages 220, 221, as follows:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of that law and are bound to obey it * * *.

> "It cannot be, then, that when, in a suit between two citizens for the ownership of real estate, one of them has established his right to the possession of the property according to all the forms of judicial procedure, and by the verdict of a jury and the judgment of the court, the wrongful possessor can say successfully to the court, Stop here, I hold by order of the President, and the progress of justice must be stayed."

The rule of this case has been followed on numerous occasions. *Goltra* v. *Weeks*, 271 U. S. 516 (1926); *Philadelphia Co.* v. *Stimson*, 223 U. S. 605 (1911). In the case of *Goltra* v. *Weeks*, *supra*, while holding that the plaintiff below was not entitled to the relief sought because of the terms of his particular contract with the government, the Court nevertheless stated that except for this situation the officers of the United States who took over certain barges might be restrained from perpetrating the acts or threatened acts. In the course of its opinion, the Court said at p. 544:

> "By reason of their illegality, their acts or threatened acts are personal, and derive no validity from their doing them by virtue of their asserted action for the government. The point is fully covered by Philadelphia Co. v. Stimson, 223 U. S. 605."

In the case of *Philadelphia Co.* v. *Stimson*, 223 U. S. 605 (1911), the complainant owned an island in the Ohio River, around which duly-authorized officers of Pennsylvania had located a harbor line, which by statute was declared to be forever firm and stable. The Secretary of War changed the harbor lines in such a way as to cross the complainant's land within the state harbor line, which had never been, as complainant alleged, part of the navigable waters of the United States. The bill of the complainant averred that the Secretary of War proposed to institute criminal proceedings with heavy penalties against the complainant for its proposed erection of buildings on its own

land. It was objected, on demurrer, that this was a suit against the United States and must be dismissed for lack of its presence as a party. This the Court refused to do. This Court at pages 619 and 620 said:

> "If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. *Little* v. *Barreme*, 2 Cranch, 170; *United States* v. *Lee*, 106 U. S. 196, 220, 221; *Belknap* v. *Schild*, 161 U. S. 10, 18; *Tindal* v. *Wesley*, 167 U. S. 204; *Scranton* v. *Wheeler*, 179 U. S. 141, 152. And in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. *Osborne* v. *Bank of United States*, 9 Wheat. 738, 843, 868; *Davis* v. *Gray*, 16 Wall. 203; *Pennoyer* v. *McConnaughy*, 140 U. S. 1, 10; *Scott* v. *Donald*, 165 U. S. 107, 112; *Smyth* v. *Ames*, 169 U. S. 466; *Ex parte Young*, 209 U. S. 123, 159, 160; *Ludwig* v. *Western Union Telegraph Co.*, 216 U. S. 146; *Herndon* v. *C., R. I. & P. Ry. Co.*, 218 U. S. 135, 155; *Hopkins* v. *Clemson College*, 221 U. S. 636, 643-645. And it is equally applicable to a federal officer acting in excess of his authority, or under an authority not validly conferred. *Noble* v. *Union River Logging R. R. Co.*, 147 U. S. 165, 171, 172; *School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94.
>
> "The complainant did not ask the court to interfere with the official discretion of the Secretary of War, but challenged his authority to do the things of which complaint was made. The suit rests upon the charge of abuse of power, and its merits must be determined accordingly; it is not a suit against the United States."

At page 16 of the petitioners' brief the proposition is stated that since this suit is one against the United States and relates to property over the disposition of which the United States has absolute, unqualified control, the consent to be sued may be withdrawn at any time as it was settled that a suit against the sovereign is a matter of grace. Five cases are cited in support of this proposition, which, indeed, has a double aspect. In its first aspect it presupposes that the United States at the time this suit was brought had absolute, unqualified control of the seized property. This, we have shown before, is not correct. For the second aspect of the proposition that this is a suit against the United States and may be withdrawn at any time as a suit against the sovereign is a matter of grace, the cases *Beers* v. *Arkansas*, 20 How. 527 (1858); *De Groot* v. *United States*, 5 Wall. 419 (1867), 432; and *Chase* v. *United States*, 50 C. Cls. 293, 306-314 (1915), are apparently cited. The other two cases, namely, *Sutherland* v. *Norris*, 24 F. (2d) 414 (C. C. A. 3d, February 1928), *certiorari* denied, 277 U. S. 602, and *Kogler* v. *Miller*, 288 Fed. 806 (C. C. A. 3d, 1923), are not directly applicable to this proposition, for they involve the circumstances which we have pointed out above with respect to the *Banco Mexicano* and *von Bruning* cases, *supra*. The *Chase* case involves principally the removal of a remedy by a statute to recover on a contract, and not the removal of any vested property right; the court so pointed out at p. 306 of its opinion. The remaining cases involve contracts with the sovereign, and it will be noted in each instance that the suit is brought against the sovereign in its own name. Such cases are easily distinguished from the long line of cases into which the instant case fits, where suits are brought not against the sovereign by name on a contract, but are brought against officers of the sovereign with respect to the unlawful deprivation or taking of property.

Many other cases, of course, might have been cited for the proposition that the sovereign cannot be sued without

its consent. All such cases, however, rest (1) upon the fact that the sovereign is sued by name; (2) upon the fact that, though the sovereign be not sued by name its officer represents the sovereign and a contract is sought to be in effect enforced against the sovereign; or (3) upon the fact that the suit is one in effect against a state by a citizen and is barred by the Eleventh Amendment to the Constitution. In the first case, of course, it is considered by the courts that the sovereign itself can do no wrong. If its agencies proceed to act for it in an unconstitutional manner, their act is not that of the sovereign, for no rights or duties or protections arise from the commission of an unconstitutional act. In the second type of cases, and the one most frequently found in discussions of this proposition, a contract right is involved. For the courts to undertake to enforce a contract, as was intimated in *Louisiana* v. *Jumel*, 107 U. S. 711 (1883), might involve taking over the political functioning of the state. Even so, collaterally at least, or where the sovereign itself brings suit, the contract will be recognized by the courts in spite of its attempted unconstitutional impairment. *Ex Parte Ayers*, 123 U. S. 443 (1887); *Poindexter* v. *Greenhow*, 114 U. S. 270 (1885). And in the third class of cases the courts will not permit a suit against a state, positively forbidden by the Eleventh Amendment, to be brought by the device of suing the officer. *Ex Parte Ayers, supra.*

With such decisions the respondent cannot take issue. It can, and does, take issue with any statement of the rule which does not distinguish the above classes of cases from an entirely different class, such as that in which the instant case is found. Here we are dealing with a situation where the definite and fundamental protection of property provided by the Fifth Amendment is being sought to be made ineffective by raising the rule that the sovereign may not be sued without its consent. This Court has, in the *Lee*, the *Goltra*, and the *Philadelphia Co.* cases, shown that the judicial power can meet such threat.

There is no question but that the respondent is entitled to the protection of the Fifth Amendment to the Constitution. *Russian Fleet* v. *United States*, 282 U. S. 481, 488 (1930).

a. The Independent Offices Appropriation Act for 1935, in so far as it attempts to preclude the maintenance of this action and to ratify the unlawful withholding by the Alien Property Custodian of moneys in excess of "necessary expenses," is in contravention of the Fifth Amendment of the Constitution of the United States.

The Independent Offices Appropriation Act for 1935 purports to accomplish one result through two different though closely-related approaches. It first prohibits the maintenance of suits and the rendition of judgment by attempting to withdraw the remedy; in the second place, it attempts to ratify the prior erroneous deductions. In both aspects it deprives the respondent of its property and takes it away. As to the first aspect whether this be a suit against the sovereign or not, the sovereign having once consented to this type of suit cannot now withdraw; for in so doing it deprives the respondent of a property right. *United States* v. *Nuestra Señora de Regla*, 108 U. S. 92 (1883). We submit, therefore, that it makes no difference if the consent were originally given by statute or by the affirmative act of the sovereign in instituting proceedings. In neither case may it later withdraw consent where to do so would interfere with property rights.

That the Act in question is unconstitutional is clearly settled by the case of *Coombes* v. *Getz*, 285 U. S. 434 (1932). There the California constitution contained a section providing that directors of corporations should be liable to creditors for all moneys embezzled or misappropriated by corporate officers. Another section reserved in the legislature the power to alter or repeal any future laws concerning corporations. Plaintiffs, who had contracted with

the corporation while these provisions were in force, brought suit to enforce the constitutional liability against the defendant, a director of the corporation, for money misappropriated by officers of the corporation. While this action was pending, the legislature repealed the section making the directors liable. This Court held that the statute repealing this section was unconstitutional as to the plaintiffs on the ground that it contravened both the contract impairment clause and the due process clause of the United States Constitution. The opinion of the Court was delivered by Mr. Justice Sutherland and concurred in by Mr. Chief Justice Hughes, Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Butler and Mr. Justice Roberts. Mr. Justice Sutherland succinctly stated as follows at page 442:

> "The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not *purely* statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor (which in every sense was a property right, *Ettor* v. *Tacoma*, 228 U. S. 148, 156; *Pritchard* v. *Norton*, 106 U. S. 124, 132) to enforce his cause of action upon the contract. *Ettor* v. *Tacoma, supra; Hawthorne* v. *Calef*, 2 Wall. 10; *Steamship Co.* v. *Joliffe*, 2 Wall. 450; *Ochiltree* v. *Railroad Co.*, 21 Wall. 249, 252-253; *Harrison* v. *Remington Paper Co.*, 140 Fed. 385, 390, *et seq.*; *Knickerbocker Trust Co.* v. *Myers*, 133 Fed. 764, 767."

And concluded at page 448:

> "It is settled by decisions of this and other federal courts (*Ettor* v. *Tacoma*, and cases cited in connection

> therewith, *supra*) that, upon the facts here disclosed, a contractual obligation arose; and the right to enforce it, having become vested, comes within the protection of both the contract impairment clause in Art. 1, § 10, and the due process of law clause in the Fourteenth Amendment, of the Federal Constitution."

While Mr. Justice Cardozo, joined by Mr. Justice Brandeis and Mr. Justice Stone, dissented from the opinion of the majority of the Court, the dissenting opinion of Mr. Justice Cardozo strengthens rather than detracts from the present case. That opinion was based upon the provision in the California constitution which permitted the legislature to modify or repeal any statute with respect to corporations at any time. There is a strong implication in the dissenting opinion that without this provision the repeal of the statute would have been unconstitutional as to the plaintiffs. It was stated as follows at page 450:

> "I add the assumption that the State of California was not at liberty, after the contract had been made and a cause of action had accrued thereunder, to make the security defeasible if it was indefeasible in its origin. Either the article of the Constitution prohibiting the impairment of contracts (U. S. Constitution, Art. 1, sec. 10) or the Fourteenth Amendment (which, however, is not invoked) might then stand in the way (*Hawthorne* v. *Calef*, 2 Wall. 10; *Steamship Co.* v. *Joliffe*, 2 Wall. 450; *Ettor* v. *Tacoma*, 228 U. S. 148; *Forbes Pioneer Boat Line* v. *Board of Commissioners*, 258 U. S. 338). The difficulty with the petitioner's case is this, that his security in its origin was not vested, but contingent. * * *"

See also the case of *Ettor* v. *Tacoma*, 228 U. S. 148 (1912).

Neither that portion of the Trading with the Enemy Act which provided for the return of property to former enemies nor any other portion of the Act contains any provision expressly or impliedly reserving the right to Congress to modify or repeal the provisions restoring property rights

to former enemies. The right of the respondent to receive the moneys sued for in this case, upon compliance with certain conditions which have been met, is an absolute and vested one. The respondent's interest is not in any sense defeasible. The attempt to preclude the respondent from maintaining its action to recover such property is clearly a deprivation of its property without due process of law.

b. The attempted ratification of the deductions made by the Alien Property Custodian in excess of "necessary expenses" did not relate back so as to give authority to such deductions as of the time they were made.

The petitioners' brief (pages 17 and 18) states that where "the power over the subject matter is as complete and unqualified as it is here", the attempted ratification "relates back, giving authority to the deductions as of the time they were made". The respondent fully admits that at the date of sequestration of the seized property the power of Congress over such property was absolute. The tacit assumption by the petitioners, whether intentional or not, that this power continues, is clearly erroneous. Congress relinquished its "complete and unqualified" power over the property by the Winslow Act of 1923 and the Settlement of War Claims Act of 1928. The petitioners' brief cites two cases to support the contention that the attempted ratification of these deductions relates back. They are *United States* v. *Heinszen & Co.*, 206 U. S. 370 (1907), and *Street* v. *United States*, 133 U. S. 299 (1890). Neither of these cases is applicable to the present case. The *Heinszen* case involved the ratification of the collection of a tax which had been collected without authority of law. The ratification there deprived no one of any vested right to property. This Court on more than one occasion had held that Congress had the right to impose a tax in respect of past benefits. The so-called ratification in this case would clearly have been legal if Congress had purported to levy the tax for the first time, as pointed out by Mr. Justice

Holmes in the more recent case of *Forbes Pioneer Boat Line* v. *Board of Commissioners*, 258 U. S. 338 (1922), (*infra*). The mere fact that Congress called it a ratification did not make its power with respect to the tax any the less complete at the date of the passage of the ratification act. In the *Street* case the President, under an act of Congress, had discharged many officers of the army. Street, a discharged officer, claimed that his discharge was improper because it was made the day after the expiration of the period within which the President was authorized to make the discharge order. Congress had subsequently passed statutes which approved at least by inference the execution of the presidential order. This case is fairly distinguishable from the present case because the order clearly terminated Street's service. At the date of such termination, Street certainly had no vested property right to continue in such service.

The rule is well settled by decisions of this Court that where the attempted ratification would deprive a party of a vested property right such ratification does not relate back. This was conclusively decided in *Forbes Pioneer Boat Line* v. *Commissioners*, *supra*. There the plaintiff sued to recover tolls which had been unlawfully collected for passage through the lock of a canal supervised and controlled by the Board of Commissioners. After the Supreme Court of Florida had decided, on demurrer to the Boat Line's declaration, that the tolls had been improperly collected and withheld, the Florida Legislature passed an act ratifying the past collection of such tolls. This act was pleaded. The plaintiff demurred, setting up among other things, the Fourteenth Amendment of the Constitution of the United States. This Court speaking through Mr. Justice Holmes distinguished the case from that of *United States* v. *Heinszen & Co.*, (*supra*), on the grounds heretofore discussed, and expressly held that the collection of the tolls could not be ratified by the legislature of Florida. The Court stated at pages 339-340:

"Stripped of conciliatory phrases the question is whether a state legislature can take away from a private party a right to recover money that is due when the act is passed. * * * But generally ratification of an act is not good if attempted at a time when the ratifying authority could not lawfully do the act. *Bird* v. *Brown*, 4 Exch. 786, 799. If we apply that principle this statute is invalid. For if the Legislature of Florida had attempted to make the plaintiff pay in 1919 for passages through the lock of a canal, that took place before 1917, without any promise of reward, there is nothing in the case as it stands to indicate that it could have done so any more effectively than it could have made a man pay a baker for a gratuitous deposit of rolls.

* * * * * * * * *

"Defendant owed the plaintiff a definite sum of money that it had extorted from the plaintiff without right. It is hard to find any ground for saying that the promise of the law that the public force shall be at the plaintiff's disposal is less absolute than it is when the claim is for goods sold. Yet no one would say that a claim for goods sold could be abolished without compensation. It would seem from the first decision of the Court below that the transaction was not one for which payment naturally could have been expected. To say that the legislature simply was establishing the situation as both parties knew from the beginning it ought to be would be putting something of a gloss upon the facts. We must assume that the plaintiff went through the canal relying upon its legal rights and it is not to be deprived of them because the Legislature forgot."

The respondent's right in this case is none the less a property right than that of the plaintiff in the foregoing case. A sum of money was unlawfully withheld from the plaintiff in that case. That is the fact in this case. It is clear, therefore, that the attempted ratification in this case did not relate back so as to validate the deductions made by the Alien Property Custodian.

Accordingly, even if this suit be deemed to be a suit

against the United States, it can not be prohibited because it is not brought against the United States by name and it involves a deprivation of property without due process of law and a taking thereof for public use without just compensation.

Conclusion.

We, therefore, respectfully submit that the decision of the Court of Appeals, District of Columbia, should be affirmed.

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Appendix A.

The Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. L. 411, as amended Mar. 28, 1918, c. 28, 40 Stat. L. 460; July 11, 1919, c. 6, 41 Stat. L. 35; June 5, 1920, c. 241, 41 Stat. L. 977; and by the Winslow Act of Mar. 4, 1923, c. 285, 42 Stat. L. 1511, 1576, and the Settlement of War Claims Act of 1928, Mar. 10, 1928, c. 167, 45 Stat. L. 254, provides in part:

Section 9 provides in part as follows:

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for

the district in which such claimant resides, or, if a corporation, where it has its principle place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was— * * *

(14) An individual who at such time was a citizen or subject of Germany or who, at the time of the return of any money or other property, is a citizen or subject of Germany or is not a citizen or subject of any nation, State, or free city, and that the written consent provided for in subsection (m) has been filed; * * *

(c) Any person whose money or other property the President is authorized to return under the provisions

of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof. * * *

(m) No money or other property shall be returned under paragraph (12), (13), (14), or (16) of subsection (b) or under subsection (g) or (n) or (to the extent therein provided) under subsection (p), unless the person entitled thereto files a written consent to a postponement of the return of an amount equal to 20 per centum of the aggregate value of such money or other property (at the time, as nearly as may be, of the return), as determined by the Alien Property Custodian, and the investment of such amount in accordance with the provisions of section 25. Such amount shall be deducted from the money to be returned to such person, so far as possible, and the balance shall be deducted from the proceeds of the sale of so much of the property as may be necessary, unless such person pays the balance to the Alien Property Custodian, except that no property shall be so sold prior to the expiration of six years from the date of the enactment of the Settlement of War Claims Act of 1928 without the consent of the person entitled thereto. The amounts so deducted shall be returned to the persons entitled thereto as provided in subsection (f) of section 25. The sale of any such property shall be made in accordance with the provisions of section 12, except that the provisions of such section relating to sales or resales to, or for the benefit of, citizens of the United States shall not be applicable. If such aggregate value of the money or other property to be returned under paragraph (12), (13), (14), or (16) of subsection (b) or under subsection (g) is less than $2,000, then the written consent shall not be required and the money or other property shall be returned in full without the temporary retention and investment of 20 per centum thereof.

(n) In the case of property consisting of stock or other interest in any corporation, association, company, or trust, or of bonded or other indebtedness thereof, evidenced by certificates of stock or by bonds or by other certificates of interest therein or indebtedness thereof, or consisting of dividends or interest or other accruals thereon, where the right, title, and interest in the property (but not the actual certificate or bond or other certificate of interest or indebtedness) was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, if the President determines that the owner thereof or of any interest therein has acquired such ownership by assignment, transfer, or sale of such certificate or bond or other certificate of interest or indebtedness, (it being the intent of this subsection that such assignment, transfer, or sale shall not be deemed invalid hereunder by reason of such conveyance, transfer, assignment, delivery, or payment to the Alien Property Custodian or seizure by him) and that the written consent provided for in subsection (m) has been filed, then the President may make in respect of such property an order of the same character, upon the same conditions, and with the same effect, as in cases provided for in subsection (b), including the benefits of subsection (c).

Section 12 of the Trading with the Enemy Act, amended as above referred to, is as follows:

* * * * * * * * *

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, * * *.

* * * * * * * * *

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be set-

tled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court:

* * *

Section 24 of the Trading with the Enemy Act, amended as above referred to, is as follows:

(a) The Alien Property Custodian is authorized to pay all taxes (including special assessments), heretofore or hereafter lawfully assessed by any body politic against any money or other property held by him or by the Treasurer of the United States under this Act, and to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such taxes and expenses shall be paid out of the money or other property against which such taxes are assessed or in respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this Act.

(b) In the case of income, war-profits, excess-profits, or estate taxes imposed by any Act of Congress, the amount thereof shall, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, be computed in the same manner (except as hereinafter in this section provided) as though the money or other property had not been seized by or paid to the Alien Property Custodian, and shall be paid, as far as practicable, in accordance with subsection (a) of this section. Pend-

ing final determination of the tax liability the Alien Property Custodian is authorized to return, in accordance with the provisions of this Act, money or other property in any trust in such amounts as may be determined, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to be consistent with the prompt payment of the full amount of the internal-revenue taxes.

* * * * * * * * *

(d) Any property sold or exchanged by the Alien Property Custodian (whether before or after the date of the enactment of the Settlement of War Claims Act of 1928) shall be considered as having been compulsorily or involuntarily converted, within the meaning of the income, excess-profits, and war-profits tax laws and regulations; and the provisions of such laws and regulations relating to such a conversion shall (under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury) apply in the case of the proceeds of such sale or exchange. For the purpose of determining whether the proceeds of such conversion have been expended within such time as will entitle the taxpayer to the benefits of such laws and regulations relating to such a conversion, the date of the return of the proceeds to the person entitled thereto shall be considered as the date of the conversion.

(e) In case of any internal-revenue tax imposed in respect of property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, and imposed in respect of any period (in the taxable year 1917 or any succeeding taxable year) during which such property was held by him or by the Treasurer of the United States, no interest or civil penalty shall be assessed upon, collected from, or paid by or on behalf of, the taxpayer; nor shall any interest be credited or paid to the taxpayer in respect of any credit or refund allowed or made in respect of such tax.

(f) The benefits of subsections (c), (d), and (e) shall be extended to the taxpayer if claim therefor is filed

before the expiration of the period of limitations properly applicable thereto, or before the expiration of six months after the date of the enactment of the Settlement of War Claims Act of 1928, whichever date is the later. The benefits of subsection (d) shall also be extended to the taxpayer if claim therefor is filed before the expiration of six months after the return of the proceeds.

Section 25 of the Trading with the Enemy Act, amended as above referred to, (added by Section 10 of the Settlement of War Claims Act of 1928) is as follows:

(a) (1) The Alien Property Custodian is authorized and directed to invest, from time to time upon the request of the Secretary of the Treasury, out of the funds held by the Alien Property Custodian or by the Treasurer of the United States for the Alien Property Custodian, an amount not to exceed $40,000,000 in the aggregate, in one or more participating certificates issued by the Secretary of the Treasury in accordance with the provisions of this section.

* * * * * * * * *

(d) The Alien Property Custodian is authorized and directed (after the payment of debts under section 9) to transfer to the Secretary of the Treasury, for deposit in such special deposit account, all money and the proceeds of all property, including all income, dividends, interest, annuities, and earnings accumulated in respect thereof, owned by the German Government or any member of the former ruling family. All money and other property shall be held to be owned by the German Government (1) if no claim thereto has been filed with the Alien Property Custodian prior to the expiration of one year from the date of the enactment of the Settlement of War Claims Act of 1928, or (2) if any claim has been filed before the expiration of such period (whether before or after the enactment of such Act), then if the ownership thereof under any such claim is not established by a decision of the Alien Property Custodian or by suit in court instituted, under section 9, within one year after the decision of the Alien Property Custodian, or after the date of the

enactment of the Settlement of War Claims Act of 1928, whichever date is later. The amounts so transferred under this subsection shall be credited upon the final payment due the United States from the German Government on account of the awards of the Mixed Claims Commission.

(e) The Secretary of the Treasury is authorized and directed to issue to the Alien Property Custodian, upon such terms and conditions and under such regulations as the Secretary of the Treasury may prescribe, one or more participating certificates, bearing interest payable annually (as nearly as may be) at the rate of 5 per centum per annum, as evidence of the investment by the Alien Property Custodian under subsection (a), and one or more non-interest bearing participating certificates, as evidence of the investment by the Alien Property Custodian under subsection (b). All such certificates shall evidence a participating interest, in accordance with, and subject to the priorities of, the provisions of section 4 of the Settlement of War Claims Act of 1928, in the funds in the German special deposit account created by such section, except that—

(1) The United States shall assume no liability, directly or indirectly, for the payment of any such certificates, or of the interest thereon, except out of funds in such special deposit account available therefor, and all such certificates shall so state on their face; and

(2) Such certificates shall not be transferable, except that the Alien Property Custodian may transfer any such participating certificate evidencing the interest of a substantial number of the owners of the money invested, to a trustee duly appointed by such owners.

* * * * * * * * * * *

Section 30 of the Trading with the Enemy Act, amended as above referred to, is as follows:

Any money or other property returnable under subsection (b) or (n) of section 9 shall, at any time prior

to such return, be subject to attachment in accordance with the provisions of the code of law for the District of Columbia, as amended, relating to attachments in suits at law and to attachments for the enforcements of judgments at law and decrees in equity, but any writ of attachment or garnishment issuing in any such suit, or for the enforcement of any judgment or decree, shall be served only upon the Alien Property Custodian, who shall for the purposes of this section be considered as holding credits in favor of the person entitled to such return to the extent of the value of the money or other property so returnable. Nothing in this section shall be construed as authorizing the taking of actual possession, by any officer of any court, of any money or other property held by the Alien Property Custodian or by the Treasurer of the United States.

The Independent Offices Appropriation Act for the fiscal year 1935 (Public No. 141), passed March 28, 1934, provides, in part, as follows:

Subsection (a) of section 24 of the Trading with the Enemy Act, as amended, is amended by adding at the end thereof the following:

No claim shall be filed with the Alien Property Custodian or allowed by him or by the President of the United States, nor shall any suit be instituted or maintained against the Alien Property Custodian or the Treasurer of the United States, or the United States, under any provisions of law, by any person who was an enemy or ally of enemy as defined in the Trading with the Enemy Act, as amended, and no allowance of any such claim now pending shall be made, nor judgment entered in any such suit heretofore or hereafter instituted, for the recovery of any deduction or deductions, heretofore or hereafter made by the Alien Property Custodian from money or properties, or income therefrom, held by him or by the Treasurer of the United States hereunder, for the general or administrative expenses of the office of the Alien Property Custodian, which deduction or deductions on the collection of any income do not exceed the sum of 2 per

centum of such income or which on the return of any moneys or properties or income therefrom, do not exceed the sum of 2 per centum of the aggregate value thereof at the time or times as nearly as may be, of such deduction or deductions, or, for the recovery of any deduction or deductions heretofore or hereafter made by the Alien Property Custodian from money or properties or income therefrom held by him or by the Treasurer of the United States hereunder, for any and all necessary expenses incurred and actually disbursed by the Alien Property Custodian or by any depositary for him in securing the possession, collection or control of any such money or properties or income therefrom, or in protecting or administering the same, as said general or administrative and other expenses and said aggregate value of returned money or properties or income therefrom have been heretofore or shall be hereafter determined by said Alien Property Custodian.

SUPREME COURT OF THE UNITED STATES.

No. 795.—October Term, 1933.

Urey Woodson, as Alien Property Custodian of the United States, and W. A. Julian, as Treasurer of the United States, Petitioners, *vs.* Deutsche Gold und Silber Scheideanstalt Vormals Roessler, a Corporation, Frankfurt a/Main, Germany.	On Writ of Certiorari to the Court of Appeals of the District of Columbia.

[May 28, 1934.]

Mr. Justice Butler delivered the opinion of the Court.

April 15, 1931, respondent brought this suit in the supreme court of the District of Columbia against the Alien Property Custodian and the Treasurer of the United States. Petitioners are their successors in office and as such have been substituted in their official capacities for the original defendants. Respondent is a corporation organized under the laws of Germany and at the time of the war between the United States and that country was there engaged in the manufacture and sale of chemicals, etc. It owned property in the United States including shares of stock in American corporations doing like business. Another German corporation, Holzverkohlungs-Industrie Aktiengesellschaft, was then similarly engaged and it also owned property in the United States including shares in one of the American corporations. Pursuant to the Trading with the Enemy Act, 40 Stat. 411, the Custodian seized the shares and other property in this country respectively belonging to these alien enemies. In July, 1930, respondent acquired all the assets of the other German corporation.

Section 24 of the Trading with the Enemy Act[1] authorized the Custodian to pay expenses incurred in obtaining and administering property taken and held by him and required payments to be made out of the property in respect of which the expenses

[1]Added by § 2, Act of March 4, 1923, 42 Stat. 1516.

were incurred. The Act of May 16, 1928, 45 Stat. 574, directed that all expenses of the Custodian's office, including his compensation, should be paid from interest and collections of trust funds and other property under his control. Under the Act of March 4, 1923,[2] there was released to each of the German corporations $10,000 of principal and income in the same amount annually thereafter, less one per cent. of the amounts paid between March 4, 1923, and November 1, 1927, and two per cent. of those paid after the date last mentioned. The amount so withheld was $1,400. By the Act of March 10, 1928,[3] the President was authorized to order return of all except 20 per cent. of the principal of money and property to which he should find the claimant entitled. Respondent and the other German corporation filed their claims which in due course were allowed. The Custodian released to them various sums, retaining the required 20 per cent. and other amounts not here material. Of the amounts released he deducted two per cent., $60,346.52. He also retained out of Treasury interest paid upon the proceeds of the seized property $8,142.31. The total of these deductions is $69,888.83; all was taken by the Custodian to cover the general or administrative expenses of his office.

The amended bill alleges, *inter alia*, the facts above stated and prays an accounting and judgment for the amount so withheld by the Custodian. Defendant interposed a motion to dismiss and an answer. The trial court overruled the motion, and on special appeal its decree was affirmed. 68 F. (2d) 391.

March 28, 1934, shortly after this writ was granted, Congress passed an Act[4] containing an amendment to § 24 of the Trading with the Enemy Act which declares: "No claim shall be filed . . . nor shall any suit be instituted or maintained against the Alien Property Custodian or the Treasurer of the United States, or the United States, under any provisions of law, by any person who was an enemy or ally of enemy as defined in the Trading with the Enemy Act, as amended, . . . nor judgment entered in

[2] §§ 9 (b) (10), (h) and 23, added by §§ 1 and 2, Act of March 4, 1923, 42 Stat. 1512, 1513, 1515, 1516.

[3] § 9 (b) (16), (m), added by §§ 11 and 14, Act of March 10, 1928, 45 Stat. 270, 272, and § 23, as amended by § 17, Act of March 10, 1928, 45 Stat. 275.

[4] Public No. 141, 73d Congress, 2d Session.

any such suit heretofore or hereafter instituted, for the recovery of any deduction or deductions, heretofore or hereafter made by the Alien Property Custodian from money or properties, or income therefrom, held by him or by the Treasurer of the United States hereunder, for the general or administrative expenses of the office of the Alien Property Custodian, . . . ".

This amendment was intended to forbid, and it is broad enough to cover, the commencement or maintenance of suits such as this. If valid, it requires the decree below to be reversed and the bill to be dismissed. The moneys sued for are a part of proceeds of property that was taken by the Custodian from respondent and the other German corporation. The Trading with the Enemy Act was passed by Congress in the exertion of the war power; its purpose was to weaken enemies by diminishing the sources from which they could obtain aid, and to strengthen this country by adding to resources for the successful prosecution of the war. Section 12 declares that after the end of the war any claim of any enemy to recover money or property received and held by the Custodian or deposited in the United States Treasury "shall be settled as Congress shall direct". 40 Stat. 424. While this suggests that confiscation was not effected or intended, it plainly shows that Congress reserved to itself full freedom at any time to dispose of the property as might be deemed expedient and to deal with claimants as it should deem to be in accordance with right and justice, having regard to the conditions and circumstances that might arise during and after the war. It is clear the enemy owners were divested of every right in respect of property taken and held under the Act. *United States* v. *Chemical Foundation*, 272 U. S. 1, 9-11.

The original Act, coupled with the later Acts of March 4, 1923, and May 16, 1928, plainly discloses a reservation to Congress of power to appropriate the property seized or its proceeds, as far as might be deemed necessary, to the payment of expenses incurred in the seizure and subsequent administration. The funds here in question are proceeds which were deducted for that purpose when payments were made from time to time to the enemy owner. As respects property or proceeds so retained by the Custodian there is no room to doubt that Congress had full power to cause it to be

applied to the payment of such expenses. And, of course, Congress had ample power to ratify deductions made by the Custodian to cover such expenses. This is in effect what was done by the Act of March 28, 1934. True, it forbade the commencement or maintenance of a suit to recover funds so deducted, but this merely reflects and emphasizes the purpose to sanction and ratify the deductions by the Custodian, and in such circumstances does not deprive the respondent of any vested interest.

It follows that the Act of March 28, 1934, infringes no constitutional right of respondent. The decree of the Court of Appeals is reversed and the cause remanded to the Supreme Court of the District of Columbia with directions to that court to dismiss the bill.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.